SPECIAL MEETING
CITY COUNCIL
SACRAMENTO

APRIL 20, 1981

MONDAY

6:30 p.m.

I HEREBY CALL a Special Meeting of the Sacramento City Council on Monday, April 20, 1981, at the hour of 6:30 p.m., to be held at:

CITY COUNCIL CHAMBER
SECOND FLOOR, 915 I STREET
SACRAMENTO, CALIFORNIA

to meet in Joint Session with the SACRAMENTO COUNTY BOARD OF SUPERVISORS for the purpose of conducting a hearing and to consider and act upon the following:

CABLE T.V. - DRAFT ORDINANCE

1. Chapter 4d - Franchise Fee Rates
2. Chapter 4e - Security - Indemnification - Insurance
3. Chapter 5 - Assignments - Remedies
4. Report re: Cost of Construction Regulation
5. Report re: Abandonment of Underground
6. Report re: Fair Rate of Return
7. Report re: Prevailing Wage Rates
8. Report re: Renewal Period
9. Report re: Separate Cable and Programming
10. Other various matters relating to Cable Television

ISSUED: This Fifteenth Day of April, 1981.

PHILLIP L. ISENBERG
Mayor

ATTEST:

LORRAINE MAGANA
City Clerk

MEMO FROM . . . .

W. R. Freeman

April 20, 1981

To: City Clerk

Attached is material for the joint cable hearing on Monday, April 20, 1981, including:

1. Suggested Agenda. This is the suggested agenda for tonight.

2. An updated Timetable. Although the timetable presented on March 23, 1981, was not formally adopted, we are using it as a general guide. It has been modified to show the current status of items.

3. Reports.

   a. Separations Policy. This was previously distributed. An extra copy is included for your convenience, since it will be discussed tonight.
   b. Prevailing Wage Rates.
   c. Underground Cable.

These are requested reports to be discussed at a future meeting.

WILLIAM R. FREEMAN
Assistant County Executive

WRF:emw
Attachments
cc: Lee Elam
Jim Jackson
Mac Mailes
Philip Mering

SUGGESTED AGENDA

Meeting - April 20, 1981

BOARD OF SUPERVISORS
AND
CITY COUNCIL

Sacramento, California

With the exception of the unreviewed sections of the initial draft ordinance, we are at the point where decisions are required on previously identified policy issues. These issues are being presented in separate reports, the first of which has been distributed and is suggested for discussion tonight. Other reports are being presented tonight for the first time and it is suggested these be discussed at a future meeting.

1. Separations Policy. Because this is a complete departure from the current ordinance draft and redrafts already directed by the Governing Bodies, it is suggested that it be reviewed prior to starting on the remainder of the ordinance. Copies have been distributed to the operators and to the consultant for Channel 40. However, there has been no general public distribution prior to tonight.

2. Other Reports. It is suggested these be summarized briefly tonight and then continued for discussion and decision after the remainder of the draft ordinance is reviewed. Copies are available for public distribution tonight.

3. Ordinance. The following sections still need to be reviewed:

Article 4d--Franchise Fees and Rates
Article 4e--Security-Indemnity-Insurance
Article 5a--Assignments
Article 5b--Remedies

COUNTY OF SACRAMENTO
CALIFORNIA

April 13, 1981

To: Board of Supervisors
Sacramento City Council

From: County Executive

Subject: CABLE TELEVISION -- SEPARATION OF CABLE AND PROGRAMMING

INTRODUCTION

At the joint meeting held on March 16, 1981, staff was requested to report back on the concept of separating the operation of the cable into two distinct segments: 1) ownership of the cable system; and 2) use of the system to deliver programs/services. Our initial contact was with our consultant who indicated: 1) he was not aware of any jurisdiction that applied this concept; and 2) it was a concept that had been considered at the national level. This report is based on the information obtained, plus a staff analysis of its use here.

BACKGROUND

In its 1972 Cable Television Report, the FCC rejected the notion of imposing a separations policy immediately, stating:

"At this stage in the development of the cable industry it is the system operator who has the greatest incentive to produce originated material attractive to existing and potential subscribers. We have tried to encourage this origination both through our origination rules...and by structuring the broadcast signal carriage rules to stimulate the development of non-broadcast services. At the same time, we have recognized that during this developmental stage we should not adopt rules that constrain experimentation and innovation in the services that cable systems provide but, rather, that we should seek to keep our future options open. When cable penetration reaches high levels and demand increases for leased channel operations, we will revisit this matter. For now, we remain of the view that the most appropriate mix for the orderly development of cable and for encouraging the maximization of its potential for public benefit is one that embraces...a multipurpose CATV operation combining carriage of broadcast signals with program origination and common carrier service..."

This concept also was contained in a <u>Report to the President</u> prepared by The Cabinet Committee on Cable Communications and submitted on January 14, 1974. The purpose of that report was to develop proposals for a new policy on cable communications and the first recommendation in that report was as follows:

> "Recommendation 1: Control of cable distribution facilities should be separated from control of programming and other services provided over the channels on those distribution facilities."

Attached is a copy of the section of the report discussing this recommendation (see page 29). Briefly stated the committee indicated: the principal business of the operator would be to lease channels or sell time on those channels; the operator could have no financial interest in those leasing channels or buying time; it was not adequate to have all users treated on a non-discriminatory basis; creation of a separate business within a corporate structure creates enforcement problems: and that it is better to establish initial policies to deal with the problems rather than create an environment that invites problems and then develop detailed regulations to deal with them.

However, the committee report did agree with FCC that: "During the transition period, cable operators should be permitted to offer programming directly or to have financial or other interests in the programming and other services offered over their systems." Further, in a footnote the report said: "It also would not be inconsistent with the separations principle to allow the system operator to have program control over one or two additional channels."

In a January 1976 staff report to the House Subcommittee on Communications entitled, Cable Television: Promise Versus Regulatory Performance, the subject was again discussed. Following is a basic principle stated in the Chapter dealing with structure of the cable industry (see page 89).

> "Where in federal regulation there is a choice between (i) a market structure that creates the possibility of abuse and consequent close, federal supervision to remedy such abuses and (ii) a structure that avoids such government supervision and relies instead upon market forces, the latter (ii) should be followed, unless a clear and compelling showing is made of the need for (i)."

The first subject discussed in the Chapter is the separations policy. The staff report agreed with the Cabinet Committee Report and expressed dismay over the exceptions noted above. The staff report states: "..., we believe Congress should act (i) to require implementation of the separations policy by the FCC as soon as the public interest would be served, and (ii) to specify that in no event should the cable operator be engaged in programming or have any financial interest in entities using leased channels on its system, ten years after the date of enactment."

STAFF ANALYSIS

Following are staff comments on this subject. These comments are somewhat limited by staff knowledge and experience, and therefore comments from the public and the operators might provide more information.

1. The Separations Policy is a Regulatory Issue. As discussed and defined in the above reports, the separations policy is proposed as an alternative to close and detailed government regulations dealing with the threat of complete control over programming content and services to be provided and unfair competitive activities. In other words, you will only receive those programs and services the cable company determines are in its best financial interest to provide. If the company runs the service or produces the programming, its best interest is to: 1) to not allow other service or program providers to compete at all; or 2) preclude them from competing on an equitable basis. In the case of the alarm industry, this is their position and they request we prohibit the operator from providing alarm services.

In a sense, the "channel banking concept" being considered creates the potential for establishing a separations policy on a limited number of channels sometime in the future. If there are future services or programs that the operator effectively precludes from using the cable system, these could be considered community access uses that would be considered for allocation of the banked channels.

2. There Has Been a Change in Technology. Since these original reports were issued, two things have happened: 1) satellite distribution of video signals has created a wide range of inexpensive programming; and 2) new technology has increased channel capacity. The operator proposals in other franchise areas seem to indicate that the cable operator finds it in its best economic interest to provide as much independent programming as possible to more fully utilize all the available channel space. This is not to say that the problems anticipated in the above reports will never occur. However, it appears that for now the operators are interested in maximizing subscriber penetration by offering the widest possible array of programming and services.

3. Costs to the Consumer. It appears that separating ownership and use might result in higher costs to the consumer or in less programming. It is difficult to accurately predict any impact without a detailed plan for separation. However, two possible scenarios are discussed below.

First let us assume that the only thing the operator can do is to lease channels or rent time and cannot on his own acquire the right to retransmit any signals. He must then invest in the cable system with no guarantee that he can provide any specific programming or services to the consumer--which means there is no single marketing strategy to maximize subscriber penetration. Without penetration, the operator will find it difficult to sell time on the system. Then there is the technical problem of insuring that individual homes receive only those programs that the channel renters want them to receive. Then there is the question of whether each channel renter will do their own billing. And lastly, the channel renter may place a mark-up on the cost of the channel in the subscriber rate. All of these factors would have a tendency to increase the cost to the subscriber. It is also doubtful that the local commercial stations would lease a channel thereby reducing programming on the cable.

If on the other hand, let us assume that the only limitation on the operator is transmission of any programming in which the operator has a financial interest. This would resolve the potential problems listed under the prior assumption. It would, however, limit programming. First, local origination by the operator would not be permitted, and it is doubtful anyone would rent a channel for such a purpose since this type of programming would be hard to sell by itself. One example of a program that would not be available by cable here is HBO if the American Television and Communications Corporation (ATC) was the franchisee since both are owned by Time Incorporated. Very likely there are other examples of this particular problem involving other cable operators. Although the loss of one or two such programs may not be significant in a system of 100 channels, neither does their availability seem to create a real problem for independent producers.

CONCLUSIONS AND RECOMMENDATIONS

Since this subject has been addressed at the national level and neither Congress nor FCC has acted on it, the conclusion is that the anticipated problems have not developed. Even if valid, that conclusion should not preclude our consideration of the concept as a possible means of regulatory control. However, such a consideration should be part of a comprehensive review of all regulatory control methods.

At this point, I cannot recommend that we implement a separations policy, because if it is really necessary then it should be done on a national level.

However, for now it is recommended that:

> A final decision on this subject be deferred and considered as part of a comprehensive review of all regulatory control measures.

Respectfully submitted,

William R Freeman

WILLIAM R. FREEMAN
Assistant County Executive

WRF:emw
Attachment

23E-A1

94th Congress } SUBCOMMITTEE PRINT
2d Session }

CABLE TELEVISION: PROMISE VERSUS REGULATORY PERFORMANCE

PREPARED BY THE STAFF

FOR THE USE OF THE

SUBCOMMITTEE ON COMMUNICATIONS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

U.S. HOUSE OF REPRESENTATIVES

JANUARY 1976

U.S. GOVERNMENT PRINTING OFFICE
64-314 O WASHINGTON : 1976

CHAPTER 8

STRUCTURE OF THE CABLE INDUSTRY

BASIC PRINCIPLE

• ***Where in federal regulation there is a choice between (i) a market structure that creates the possibility of abuse and consequent close, federal supervision to remedy such abuses and (ii) a structure that avoids such government supervision and relies instead upon market forces, the latter (ii) should be followed, unless a clear and compelling showing is made of the need for (i).***

INTRODUCTION

We discuss first the so-called separations policy—that the cable entrepreneur be completely separate from the programming aspects of the operation—and then various issues concerning industry structure in light of the disposition of the separations principle and relevant policy considerations. Such issues involve cross-ownership of cable by various other media or entities.

SEPARATIONS POLICY

Background. In its 1972 *Cable Television Report*, the FCC rejected the notion of imposing a separations policy immediately, stating:

> At this stage in the development of the cable industry it is the system operator who has the greatest incentive to produce originated material attractive to existing and potential subscribers. We have tried to encourage this origination both through our origination rules . . . and by structuring the broadcast signal carriage rules to stimulate the development of non-broadcast services. At the same time, we have recognized that during this developmental stage we should not adopt rules that constrain experimentation and innovation in the services that cable systems provide but, rather, that we should seek to keep our future options open. When cable penetration reaches high levels and demand increases for leased channel operations, we will revisit this matter. For now, we remain of the view that the most appropriate mix for the orderly development of cable and for encouraging the maximization of its potential for public benefit is one that embraces . . . a multipurpose CATV operation combining carriage of broadcast signals with program origination and common carrier service . . . .[1]

Upon appeal, the Court of Appeals affirmed the Commission's action, holding that the Commission had made "a rational choice", and that the Court should not "substitute its judgment for that of the Commission" on a policy matter of this nature.[2]

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[1] 36 FCC 2d at 97 (para. 146). On reconsideration the Commission adhered to this view (39 Fed. Reg. at 13857): "Cable's success is by no means assured in all these large markets with a plethora of broadcast service. The cable entrepreneur should be given appropriate leeway during this critical period of development. The ACLU's approach, which may prove sound eventually, at the present time does not afford the industry the flexibility that we desire to encourage experimentation and innovation. Further we doubt very much if, in new systems in major markets, a scarcity of access channels will arise from a cable operator's excessive use of bandwidth for his own origination purpose; but if a problem should arise, we shall be alert to take action to maintain our emphasis on the provision of access channels."

[2] *ACLU* v. *FCC*, 523 F.2d 1344 (9th Cir. 1975).

84-314 O - 78 - 7

The 1974 Cabinet Committee Report on cable television also dealt extensively with the separations policy (see Appendix C). Indeed, it made this policy the linch-pin of its long-range program.[3] However, the Report agreed with the Commission that:

> [D]uring the transition period, cable operators should be permitted to offer programming directly or to have financial or other interests in the programming and other services offered over their systems.[4]

Evaluation. We concur fully with the Cabinet Committee Report that it is of the utmost importance to implement the separations policy as soon as it is feasible to do so.[5] The sound approach is to establish a market structure for cable that in itself serves the public interest, (i.e., the cable operator wants to lease channels or sell time on channels because that is his only business)—and not to permit an industry structure that invites abuse and then close government regulation to deal with the abuse.[6] As the Cabinet Committee Report wisely notes:

> Simply requiring the system operator to treat all channel users on a non-discriminatory basis without prohibiting him from having an economic interest in a user would not be adequate to prevent anti-competitive behavior. The cable operator could, for example, charge artificially high, but still "non-discriminatory," rates to users of his channels and use the excess profits from his system ownership activities to subsidize his programming affiliate. This cross-subsidization would place the other channel users at a severe competitive disadvantage. Moreover, requiring "arms length" transactions between companies in the same corporate structure and prohibiting cross-subsidization present severe enforcement problems. Such problems typically lead federal or state enforcement agencies to impose rate-of-return, public utility-type regulation in an effort to control cross-subsidization and other anti-competitive abuses.[7]

We do not quarrel with the judgment to permit cable origination during this critical "infancy" period. An immediate separations policy might result in a tidy legal theory but no cable television in major markets, since the cable entrepreneur is the one now most motivated to experiment and to risk venture capital on these new services. Since there is this agreement both on long-term and short-term policies, it might be thought that there is no need for legislative consideration of this area.

We believe, however, that the Congress should legislate in some respects. First, the FCC has never stated that it accepts the separations policy. It has simply indicated that it will revisit this matter at a later stage in cable's development. Further, as shown by other FCC action in the area of industry structure, the Commission is most reluctant to require divestiture.

Second, the Cabinet Committee Report, after making separations *the bedrock* of its recommendations, added a footnote:

> It also would not be inconsistent with the separations principle to allow the system operator to have program control over one or two additional channels.[8]

No explanation is given for this astonishing statement which apparently simply reflects cable industry pressure. If such a policy were adopted, all the problems of abuse and government regulation to ferret out such abuse arise. The Report is thus making the promise of separations to the ear, and breaking it to the heart.

In view of this history, we believe that Congress should act (i) to require implementation of the separations policy by the FCC as soon as the public interest would be served, and (ii) to specify that in no event should the cable operator be engaged in programming or have any financial interest in entities using leased channels on its system, ten years after the date of enactment. The legislation would make clear that the Commission can and should act sooner than the ten-year period, if circumstances warrant divestiture (e.g., substantial penetration in the major markets; substantial emergence of non-cable programming entrepreneurs, including cable networks).

The 10-year period, however, would establish the principle and operate as a definite cut-off date, to be extended only by legislation and upon a clear and convincing showing to the Congress of the need therefor.

[3] *Ibid.* at 29.
[4] *Ibid.* at 53.
[5] Under this policy, the cable entrepreneur could not have any financial interest in the entities using leased channels on its system (e.g., no common stock holdings, loan arrangements, share in the profits of the programmer's operations, etc.)
[6] This approach is referred to in the ensuing discussion as the market structure approach.
[7] Report at 30.
[8] Report at 29–30.

KAREN B. POSSNER

CABLE

COMMITTEE MEMBERS:

ROBERT H. FINCH
LEONARD GARMENT
HERBERT G. KLEIN
PETER G. PETERSON
ELLIOT L. RICHARDSON
GEORGE ROMNEY
CLAY T. WHITEHEAD, Chairman

REPORT TO THE PRESIDENT · The Cabinet Committee on Cable Communications · 1974

OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20504

January 14, 1974

DIRECTOR

The President
The White House
Washington, D. C.

Dear Mr. President:

I am pleased to submit to you the report of the Cabinet Committee on Cable Communications. As you requested, the Committee has developed proposals for a new policy that will allow cable to be integrated into our nation's communications media in an orderly way that is consistent with the principle of the free flow of information so deeply imbedded in our national traditions.

During the Committee's deliberations, we heard the views of a wide range of industry groups and nonprofit and public interest organizations, and we also examined the extensive research on cable communications. On the basis of the views we heard, the research we examined, and our own study and deliberations, the Committee has recommended a comprehensive, new national policy for cable communications.

Our goal was to insure that cable would develop as a communications medium open and available to all Americans free of private or governmental barriers to its use. Under such a policy, we believe that cable can be a communications medium that allows the great creativity of the American people to express itself.

Sincerely,

Clay T. Whitehead

CHAPTER II

CABLE: A MEDIUM OF COMMUNICATIONS OPEN TO ALL

If cable is to become a constructive force in our national life, it must be open to all Americans. There must be relatively easy access at one end of the cable for those who wish to promote their ideas, state their views, or sell their goods and services; and at the other end, the consumer must have a meaningful freedom of choice to select from among a diverse range of cable programming and services. This unfettered flow of information is central to freedom of speech and freedom of the press which have been described correctly as the freedoms upon which all of our other rights depend. These freedoms are no less essential in the days of cable than in the days of soapboxes and pamphlets.

Our nation's theory of democratic government is based on the principle that the power to make decisions affecting the flow of information to and from the individual must be dispersed so that irresponsible, inequitable, or simply bad decisions will not have a pervasive, irreversible effect. In view of this principle, both governmental power and excessive concentrations of private economic power over the flow of information have been viewed as inimical to the achievement of a free and open society. The long-standing and deeply-felt opposition to concentrated private power over the media stems not simply from a belief that such power inevitably must be antithetical to this central principle of our Government. Although this reason continues to be valid, traditionally the excessive concentration of private power also has been opposed because it has often been used as the pretext for Government's own intrusive entry into the communications media. Given the technological and economic imperatives of cable, excessive concentrations of both private power and government power threaten the unfettered flow of diverse information and ideas in the cable medium.

The private power of the cable system operator is potentially great, because of the local monopoly characteristics of cable. Unless restrained in some manner, the system operator could control all of the channels on his cable system, which could constitute the bulk of the channels of electronic communications in a particular locale. There are two ways to restrain this power. One is a detailed governmental prescription of the affirmative obligations of the cable operator, requiring him to use his power in socially desirable ways. The second alternative is to limit the number of channels over which the cable operator has control of program content and to require that the bulk of channels be leased to others. By the first alternative, the Government would seek to regulate the *use* of private power; by the second, it would seek to limit its *extent*.

The first alternative was chosen for broadcasting—a policy prescribing the use of private power. Under this approach, the FCC enforces affirmative programming obligations upon the broadcaster to regulate exercise of his power over program content. While it is difficult to take issue with many of the goals underlying such Government-imposed program requirements, they result in a regulatory framework in which the Government has the power to oversee the content of a medium of communications and expression. The existence of the power affects the relationship between the Government and the broadcast media, and creates the constant danger of unwarranted governmental influence or control over what people see and hear on television broadcast programming.

The Separations Policy

The Committee has chosen the second alternative—a policy limiting the extent of private power, rather than asserting detailed regulatory control over the use of that power. We recommend adoption of a policy that would separate the ownership and control of cable distribution facilities, or the means of communications, from the ownership and control of the programming or other information services carried on the cable channels. By separating the distribution function in cable, which is a natural monopoly, from the programming functions, which can be highly competitive, the dangers of governmental intrusion and influence in programming can be avoided while the wide variety of competitors vying for the public's attention can be expected to produce a diversity of programming.

This policy would create an essentially neutral distribution medium and require control of the medium to be separated from control of the messages on it. The effects of private economic power on the means of distribution would cease to be a danger to the free flow of information, and there would be little need for the continued application, or threatened application, of Government power. The cable system operator would be obliged to deliver the messages of channel users with as little regard to content as the Postal Service has for the content of the print media. Ideas would have to win their influence in the marketplace, rather than acquiring exposure through the regulatory process.

To place the separations policy in perspective, it is important to understand the functions of the mass media, and the present extent of Government regulation of the various mass media.

The Functions of the Mass Media

Three basic kinds of functions are involved in the mass media: (1) the creation or compiling of information or entertainment; (2) the selection or editing of this information; and (3) the transmission or distribution of the information to the public.[1]

The owners of the various mass media differ markedly in the nature and extent of their involvement in each of these three functions. The information and entertainment that appears in newspapers, for example, is written primarily by reporters and writers who are employees of the newspaper, and this material is selected and edited by other employees. The newspaper is often printed on the paper's own presses and usually distributed throughout the metropolitan area in the newspaper's own trucks. It ultimately reaches the reading public through independent newsstands and retail stores or through delivery services, which may be owned by the newspaper. In magazine and book publishing, there is less of this "vertical integration"[2] of the media functions than in newspaper publishing. A book publishing company is often no more than a suite of offices from which representatives of the publishing company purchase manuscripts from writers, and then contract with printing companies to print them. The books are shipped through the mails and various express companies to a wide range of independent retailers, who sell the books to the reading public. While many magazines employ their own writers, they often contract out most of the functions involved in producing and distributing magazines. In television broadcasting, the essential functions of selection and transmission are, by law, performed by the same entity, the television station; and the station employees may create the programming as well.

[1] The terms "media" and "mass media" are often used with great ambiguity. Generally, "medium" refers to the various technological means of producing or distributing information such as newspapers, magazines, radio broadcasting, or motion pictures. The term "media" usually refers to the industries or businesses that provide information or entertainment to the public. A medium can have mass availability, technologically and economically, but it may or may not collect a mass audience around a particular presentation. For example, television today is a mass medium in both senses, but hobby magazines collectively constitute a mass medium only in the sense of availability to a large audience; millions of copies of such magazines could be printed and distributed inexpensively, but far fewer would be bought and read.

[2] A firm is said to be vertically integrated if it performs a series of successive functions in the production and distribution of its products. As an example, a petroleum firm that produces crude oil, transports it, refines it, and again distributes it to its own service stations would exhibit a high level of vertical integration. An enterprise is horizontally integrated if it operates a number of facilities that produce the same products. Examples are chain stores, and, in the cable industry, the so-called multiple system owners who operate a number of geographically dispersed cable systems.

CHAPTER III

LONG-RANGE POLICY RECOMMENDATIONS

This chapter sets forth the Committee's policy recommendations for a developed cable industry. Discussion of the recommendations is in three parts:

—an industry structure for the 1980's and beyond;
—an institutional and jurisdictional framework for cable regulation; and
—the relationship between the consumer and the cable.

As stated in Chapter II, the Committee attempted to anticipate and deal with the adverse effects of concentrated power in a vertically-integrated cable industry. We recognize, however, that full implementation of the policy is not appropriate for the developing cable industry of today, and, therefore, in Chapter IV the Committee recommends a transition period during which the full policy gradually would be implemented.

Industry Structure: Distribution

Recommendation 1: ***Control of cable distribution facilities should be separated from control of programming and other services provided over the channels on those distribution facilities.***

Under this recommendation, the principal business of the cable operators[1] would be to lease their channels, or sell time on those channels, to individuals or organizations that wish to offer programs or other services to the public.[2] The cable operator would be precluded from having any financial interest in, or relationship with, those

[1] The cable operator is the person or entity holding the cable franchise or effectively controlling, through ownership or other arrangements, the operation of the cable system in the geographical area covered by the cable franchise. The cable "system" consists of the facilities used for "head-end" receive-transmit, switching, storage and control functions; facilities used for local distribution of signals; subscriber "taps;" and related equipment and functions. We recommend, however, that the separations policy not apply to those limited capacity cable systems whose operators do no more than: (1) retransmit the signals of television and radio broadcast stations that are defined by the FCC as "local" to the cable system's franchise area; and (2) provide "weather scan" or teleprinter-type information service on no more than one or two standard television channels.

[2] Even if the cable system owner does not control the content on all channels, he will still have an incentive to restrict access to his system by others if he controls and profits from a significant proportion of the channels, thereby defeating the purpose of the separations principle. It would, however, be consistent with this principle to allow the system operator

leasing channels or buying time on his cable system. This would preclude common holdings in stock or other securities; loan arrangements; or any other interest in the channel user's enterprise.[3] If the cable system operator were to have such an interest in a channel user, he would have an economic incentive to favor the user in which he had a financial interest.

Simply requiring the system operator to treat all channel users on a non-discriminatory basis without prohibiting him from having an economic interest in a user would not be adequate to prevent anti-competitive behavior. The cable operator could, for example, charge artificially high, but still "non-discriminatory," rates to users of his channels and use the excess profits from his system ownership activities to subsidize his programming affiliate. This cross-subsidization would place the other channel users at a severe competitive disadvantage. Moreover, requiring "arms length" transactions between companies in the same corporate structure and prohibiting cross-subsidization present severe enforcement problems. Such problems typically lead federal or state enforcement agencies to impose rate-of-return, public utility-type regulation in an effort to control cross-subsidization and other anti-competitive abuses.

The Committee believes it is better to establish policies at the outset that deal with the causes of such adverse effects than to create the incentives for abuse and invite detailed Government regulation to deal with the effects.

County of Sacramento
California

April 20, 1981

To: Board of Supervisors
Sacramento City Council

From: County Executive

Subject: REMOVAL OF UNDERGROUNDED CABLE

At the joint hearing on March 23, 1981, questions were raised concerning the following section of the proposed draft:

> "________ REMOVAL. Upon termination of a franchise, the Franchisee, at its sole expense, shall, unless relieved of the obligation by the County or Cities, remove all elements of the Cable Television System from the Streets which are not purchased by the Cable Television Commission or its assignee. The Franchisee shall apply for and obtain such encroachment permits, licenses, authorizations or other approvals and pay such fees and deposit such security as required by applicable ordinance of the County or Cities in which the Streets are located, shall conduct and complete the work of removal in compliance with all such applicable ordinances, and shall restore the streets to the same condition they were in before the work of removal commenced. The work of removal shall be completed not later than one (1) year following the date of expiration of the franchise."

Although this section was tentatively approved, the operators requested that the ordinance be drafted to permit the franchisee to leave the cable in the ground rather than pay the cost of removal. From the franchisor's standpoint this would be advantageous in terms of not tearing up streets or easements if there was no need. The question raised was whether there would be problems in future years if the cable was not removed.

In reviewing this topic, two other ordinance sections might be impacted by a particular decision. They are: non-renewal by any of the cities of Folsom, Isleton, and Galt and their right to require removal (page 28); and relocation of cables in conjunction with another public or utility project (page 55).

The apparent concern by the operators is that the decision to require removal is left to a future body with no requirement to find a public need for removal. If we are going to modify the ordinance to preclude a future review and decision, then we must evaluate the potential problems of undergrounding now and try to construct the ordinance to address those problems. Specifically, we must consider: where the cable is placed, whether it is placed in conduit, and under what circumstances it might be necessary to remove it.

The trunk and feeder cables will be placed in streets or in front yard easements. The individual house connection will be on private property. These cables may or may not be in conduit. Some operators use conduit on the basis that a fiber optic cable will replace the coaxial cable and conduit will reduce future costs. Although the cable is underground, there will be access points constructed above ground. The question of removal can come about in one of several ways; upon termination or non-renewal of the franchise; replacing existing cable; or re-routing cable due to accommodate another construction project. Although doubtful, the salvage value of copper cable may some day make removal economically feasible if it could be done without trenching.

From a regulatory standpoint, it is difficult to anticipate all possible circumstances. With this in mind, there are three basic approaches to take:

1. Require Removal. There is little doubt that any abandoned above ground facilities should be removed. However, removal of undergrounded cable that would require trenching on streets or easements should not be required unless abandonment of the cable constitutes a hazard of some kind.

2. Prohibit Removal. If there are no problems with abandonment, then we might consider prohibition of removal, with exceptions provided if no public inconvenience were involved. For instance if a company needed to replace cable, they might find it advantageous to retrench the original cable paths, remove the old cable for salvage and lay the new cable in the same trench all in one operation.

3. Leave to Operator. This alternative would permit the operator to decide whether to remove or abandon. Such a decision would be based on economic considerations, and probably would not take into consideration public interest concerns.

4. Retain Options. Upon expiration of the initial or a renewed term of a franchise, cable which has been installed underground would be abandoned by the Franchisee, and title to the cable would vest without cost or charge in the jurisdiction in which the Street is located, unless the Board of Directors of the Cable Commission orders removal of a portion or all of the cable. Such an order may be issued if the Board finds that removal is required to eliminate a safety hazard.

At this point, we cannot identify any significant problems with abandonment of underground cable. On the other hand, requiring removal by opening all old trenches would be detrimental to public convenience and undoubtedly objectionable to property owners. However, neither of these conclusions should be used to guarantee the right of abandonment now. For this reason, alternative four is recommended so that decisions can be made based on the facts existing at the time a problem is addressed. However, staff recommends that required removal not be used as a means of penalizing an operator for termination or non-renewal of a franchise.

It is, therefore, recommended that:

Staff be directed to modify the draft ordinance to reflect alternative number four.

Respectfully submitted,

William R Freeman

WILLIAM R. FREEMAN
Assistant County Executive

WRF:emw
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