

Panel Comments  
Western Cable Show Convention  
San Diego - November 9, 1977

I'm glad to be here with you---there never has been a better time for a cable convention and, particularly, a Western Cable Show --- now that California Senate Bill 177 is passed.

Certainly the years 1976 and 1977 will be registered in cable history as the beginning of the real golden era of cable.

There have been many positive developments for cable for the past two years. Cable has undergone substantial de-regulation by the FCC. I know it's not as much as you'd like (no big industry these days attains that millenium) but it was a lot more than many other people liked. You still face varying degrees of opposition from different groups like utilities, some citizens groups seeking better "access," broadcasters, translators, some programmers wanting guaranteed channel access, local franchisers, EEOC and some government officials advocating among other things "hardware-software" separation.

However, overall the plusses overwhelmingly outweigh the minuses for the cable industry today. In addition to the substantial de-regulation, the economic picture has vastly improved -- more systems are showing increased profits and many cable stocks have doubled or tripled. Then, too, your Washington representation is excellent -- knowledgeable, aggressive, but with a real touch of class. And it looks like you will be getting legislative relief for your troublesome pole attachment problems -- the House has already passed a bill and another bill is being considered in the Senate -- And speaking of legislation and why it's particularly good to be here in California, my hat is off to Walter Kaitz and the California operators for their remarkable legislative accomplishment in effecting the passage of California Senate Bill 177 which settled the pole attachment problem in this state. It certainly sets a fine precedent for other states and constitutes a timely, positive development that will be noticed in Congress.

One of the unknowns ahead of you is the predicted re-write of the Communications Act and its regulatory effect on the cable industries. The extent of this proposed new legislation is speculative at this time but it could be a major influence in future development of the cable industry. Your program committee has wisely scheduled the two leading Congressional experts-- Congressmen Van Deerlin and Frey to discuss re-write.

One of the questions that I have run into constantly since arriving here in San Diego has been the obvious one--what will be the attitude of the new Commission, particularly the two new members, not only as to cable but as to broadcast, telephone and other matters? And if you are holding your breath until I answer that one--don't. Obviously, the new Chairman needs time to get his feet on the ground communications-wise, to select his staff and to establish his philosophies and program priorities as he deems best. The trade press had indicated that the new Chairman will make no public appearances for the first six months--if so, I admire his wisdom. His philosophies, thus, are more likely to unfold in Commission meetings rather than in public appearances. However, I feel certain that cable, broadcasting, common carrier and all the other areas coming under our jurisdiction will continue to receive careful scrutiny and fair, even-handed treatment--at least from our point of view.

The new Commission must face the inescapable fact that there are a number of cable matters outstanding and due for consideration sooner or later. I'll list a few of these, but I don't want to go into any detail as I am probably encroaching on the area to be covered by Commissioner White--who is very well read and much more attractive than I am. She has the fascinating subject of the future of cable including the exciting potential of satellite distribution and fibre optics.

#### Cable Today - Personal Evaluation

I have been asked to give you my personal views as to the state of the cable industry today and to try to put a finger on the pulse of cable development through the regulatory process over the past couple of years. Frankly, I can utilize the words of a well-known commercial--"you've come a long way, baby." As I mentioned, the Commission the past several years has undertaken numerous re-regulatory and de-regulatory steps which have permitted cable to grow and function more efficiently. I have here a list of FCC actions to date starting back in May of 1974 which sets forth some 57 re-regulatory actions taken by the Commission--Relax, no I am not going to read these or bore you with a recital of all of our "good deeds." But I note such things as our adoption of less restrictive network non-duplication rules permitting dual channel carriage, raising the exemption level for small cable systems, cancellation of the 1977 rebuild, deletion of some of the earlier pay cable requirements and restrictions--I think all in all you have made good progress in de-regulation.

Further, the courts have had a word or two to say about regulation of the cable industry--and again you have generally come out with considerable gains. To me the overall pattern is indicative of a continuing relaxation of federal proprietary control of a comparatively new and unknown industry and portends continued growth and expansion of service to the public.

The Commission has yet to face the matter of further cable definitions and small system exemptions, equal employment opportunities, of course the cable signal carriage matter, more on technical standards, significant viewing standards and the matter of syndicated exclusivity. (DISCUSS PERSONAL VIEW ON SYNDICATED EXCLUSIVITY.)

Also pending are a number of matters for reconsideration by the Commission including our definition proceeding wherein we declined to regulate MATV systems, among other things; our deletion from the rules of franchise standard requirements; and several other matters of substantial importance.

Now, let me give you my view of some of the more important matters to your industry at the present time -- and the items I am about to list derive from numerous conversations with cable operators both here in San Diego and in recent weeks prior to my visit here. I do not attempt to list any of these matters in an order of importance -- I think all of them are important to one or another of you depending upon your situations.

1. COMMUNICATIONS ACT RE-WRITE: I have already mentioned this and there is little more to say other than "wait and see." Frankly, I think that any final legislation in this area is a long way off and what form it will take will be ultimately determined by Congress. I have utmost confidence in Chairman Van Deerlin's fairness and understanding of the complex issues involved.
2. POLE ATTACHMENTS: The matter of pole attachments is of course pending in the Senate. The House passed a bill two weeks ago without any forfeiture provision. As you probably know, the Senate version, S-1547, includes the much debated forfeiture provision previously recommended by the Commission. The Senate bill will probably be voted on sometime in January when Congress reconvenes. This will result in a conference between the Senate and the House to determine final form of the bill.

3. FORFEITURES: Having mentioned forfeitures I will dwell on this only to the extent of indicating my personal position in favor of forfeiture provisions. I have heard the argument on both sides as to the propriety of forfeiture provisions at the present time and I continue to believe that Commission authority to assess forfeitures will aid cable industry quality and development. Incidentally, I personally favor legislation substantially increasing broadcast forfeitures for particularly large, egregious violators. This, too, will require legislative action by Congress.
4. SIGNAL CARRIAGE: This subject will include our on-going economic inquiry as a prelude to the extent to which carriage restrictions may be further relaxed. The proposed five year experimental period without any carriage restrictions worries me somewhat, particularly for small and medium-size markets. I am most willing to look at relaxing the restrictions, but very carefully, with a thorough review of impact, if any, resulting therefrom.
5. SYNDICATED EXCLUSIVITY: Here again I must confess to rather firm views at this time with respect to deletion of syndicated exclusivity restrictions. Broadcasters pay money for proprietary rights for a particular program or programs in their areas. This has been a long established and accepted business practice of broadcasters competing against other broadcasters. To permit additional distribution of such exclusively purchased programming wipes out the very exclusivity for which he has negotiated and paid. I do sympathize with the situation where a local broadcaster carries a syndicated program once a week as against an imported signal which carries the program five days a week and, under the rules, the five-a-week strip must be blacked out. Frankly, I would rather treat such egregious situations on an individual ad hoc basis.
6. FRANCHISE STANDARDS: No particular comment--I voted for the reduction in regulatory franchise standards.
7. CABLE DEFINITION AND SMALL SYSTEMS: On the small systems exemption up to 500, I found no particular problem. With respect to whether we should extend the exemption to under 1,000, I must simply await whatever arguments and showings are presented to the Commission before I can take a final position.
8. LEASED CHANNELS: No comment other than to recognize the problem and to assure you that I will study it in detail before taking a final position.

9. SIGNIFICANT VIEWING STANDARDS: This is an extremely difficult area, in my opinion. Frankly, I have trouble with the present approach to determining when a signal is "significantly viewed". I believe there is more to determining the local interest in an available over-the-air signal than merely X percentage for X percent of the time. It seems we need a more realistic formula. This ignores the practical aspect of program appeal and the resultant number of viewers. Further, I have trouble with statistical measurements of viewing on a county-wide basis when our concern as to cable carriage of a so-called "significantly viewed" signal really applies to viewing within the cable community. Finally, I have some difficulty in appreciating the alleged additional "competition" or "impact" from cable carriage of a signal that is available over-the-air in the cable community on grounds that such carriage unduly impacts on the local broadcaster and adds to his competition. As a practical matter, the signal as available over-the-air is already competing for viewers and whether it is received over-the-air or via cable does not alter the basic situation in my opinion. I would like to see the Commission take a long, hard look at the significant viewing problem and attempt to come up with a more rational approach to the matter.
10. TRANSLATORS: Frankly, I have not been particularly impressed by the sporadic attempts to raise translators as a real threat to cable television. I have read the many arguments set forth and I find many of them to be fallacious. I recognize that translators can be competitive to a cable operation in a given community, although limited in extent. I don't see translators threatening your capability for diversity and multiple channels. I do recognize that there can be instances of translator interference to cable headend reception--these situations should be brought to the attention of the Commission for individual resolution. I do not agree, generally, with the claim that translators and cable should be regulated on a parity basis. There are substantial differences in the two services in motivation for initiating service, in number of channels carried, fees and profitability. I think our rules have taken into consideration the differences in characteristics.

This gives you an idea of some of the main topics of conversation that I have encountered recently in connection with your industry. Certainly, these are not all of your problems, nor necessarily even the most important, depending on where you sit and what your individual priorities may be. I don't pretend to have the answers to the problems, nor do I have any judgments engraved in stone. My views are open to change based on new developments and on facts and legal arguments presented.

Remember all industries come to the FCC to present views favorable to their own private, economic interests--true of cable, broadcasting, telephone, land mobile, movie producers, CB manufacturers, satellite companies, etc. That is only natural. Most successful industries these days are socially conscious--they know their proposals must first serve overall public interest to best serve their own economic interests. It is difficult at times to determine just where the public interest really lies. As for cable and broadcasters we are still hoping for peaceful co-existence. However, when the controversy gets too heated or the arguments too self-serving I remind myself of the affluence of these two industries and mentally say "a blessing on both your houses."

Seriously, it is our job to apply an objective, overall public interest factor--that must be the dominating consideration in all Commission deliberations.

All I can promise you is to exercise my best good faith judgment on what proposals or options make the most sense legally, ethically and morally and vote accordingly.

As much as the courts will allow, I plan to continue an open-door, open-mind policy. I wish you continued success in the challenging, promising years ahead.

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