

**CABLE/TELCO/BROADCASTING**

**BACKGROUND AND LEGISLATIVE PROPOSALS**

The following is a relatively modest proposal for legislative changes to accommodate changes in the telecommunications, cable and broadcasting industries largely as the result of technological change. These changes will require modification of the Commission's Rules, the Communications Act and will result in removal of some restrictions of the Modification of Final Judgment (MFJ).

Over the past two decades much has changed with respect to telecommunications and video entertainment systems. In 1969, cable television was essentially a community antenna service designed to provide video services to remote communities who otherwise would have had marginal television service at best. The vast bulk of the nation's telephone service was provided by AT&T and it was principally analog voice service. And, terrestrial broadcasting provided essentially all of the video service to the home.

Over the past twenty years, the situation has changed dramatically. Video services are now readily available via video cassettes, satellites, cable (both wired and wireless),

and terrestrial broadcasting. Free over-the-air broadcasting remains the most pervasive video medium, but its share of audience has eroded dramatically over the past ten years due primarily to cable penetration. According to industry analyst Paul Kagan, approximately 54% of all TV households subscribe to cable service, indicating the remaining 46% of the households still rely on free over-the-air broadcast for news, local public affairs and essential information necessary for an informed electorate and functioning democracy. Cable now passes 86% of all TV households with 60% of those homes subscribing to the service. This indicates approximately 14% of households do not have access to cable. Of those who do have access to cable, 26% choose not to subscribe or cannot afford to subscribe -- this represents a large number of people numerically. Cable, once totally dependent upon broadcast signals, which it received at far below market rates under a compulsory license, now provides many cable only channels of programming. Much of this programming is produced by vertically-integrated cable multiple system operators (MSOs). Moreover, cable is increasingly competitive with local broadcasting stations for advertising revenues. And, since many cable subscribers do not retain the ability to receive over-the-air signals, cable systems now have the ability to restrict access by their subscribers to local broadcast stations. Since the Commission's must carry rules were overturned by the D.C. Circuit Court of Appeals, cable systems are not required to carry any local broadcast signals.

They may carry some programs from various local broadcasting stations but need not carry all, or in fact any, of the programs broadcast by local stations. Cable has many attributes of a local monopoly and it is virtually unregulated. It is a monopoly transmission pipeline which has the power to obstruct or prevent a local TV station from accessing the public it is licensed to serve by the government. Thus access to local broadcast signals for the approximate 60% of U.S. households who subscribe to cable is subject solely to the discretion of the local cable operator. It also has the power to switch channels assigned to stations by the government (FCC).

The telephone industry, too, has changed dramatically. The change began with the Carterphone decision which permitted foreign attachments (meaning owned by someone other than the telephone company) to be connected to the phone system. The Carterphone line of cases and the Execunet cases culminated in a landmark antitrust case against AT&T which resulted in divestiture. The bulk of local exchange telephone services are now provided by seven Regional Bell Operating Companies (RBOCs). Interexchange service can be purchased from half a dozen major facilities-based carriers and hundreds of regional carriers some of whom are facilities-based but most are resellers of bulk service offerings of major carriers. While AT&T continues to lead the long distance interexchange market overall, MCI and Sprint are taking larger and larger market shares away from AT&T, increasingly from Fortune 500 customers.

The local exchange companies continue to enjoy a virtual monopoly for most local intraexchange services. They are also branching out into competitive ventures and would like to branch out even further. They are constrained to some extent by restrictions of the MFJ which include a ban on provision of information services. Information services include electronic yellow pages and, presumably, video entertainment. Some of these restrictions may be having the effect of slowing constructive technical development of telephone networks which are the backbone of the information age.

The regional Bell companies are in various stages of preparing to provide broadband services to small business and residential customers. The provision of such services are now technologically and economically possible through the development of fiber optic transmission paths and the imminent development of optical switching. However, while the price of fiber cable is declining and the price of copper is rising, installation of fiber instead of copper in new construction of loop plant still cannot be justified economically. Obviously, under current restrictions, replacement of existing copper loops with fiber is economically impractical. It could be justified, however, if there were a broadband service the public wanted and was willing to pay for. The only such service which has demonstrated those qualities is video entertainment such as that now provided by cable systems.

The local phone operating companies should be permitted to offer video and certain other information services under certain restrictions. There doesn't seem to be a sound public policy reason that they couldn't offer television services on a common carrier basis. That is, should a program producer care to offer his service to the public directly, he should be able to buy whatever capacity he needs through a telephone company tariff. Local broadcasters, to ensure that they will continue to have access to their audience, could do likewise, perhaps at a subsidized rate recognizing their public interest obligations.

Implicit with the proposal to allow telcos into cable, however, is a prohibition against the purchase by a telephone company of an existing cable system to provide this service. Entry into video services by telephone companies should be predicated upon the deployment of switched fiber technology. The mere transfer of existing facilities would do nothing to economically justify the replacement of copper loops with fiber. It is doubtful that purchase of existing systems would contribute materially to the rapid development of fiber loops and it would merely substitute the present provider of a monopoly video service for another. Switched video technology now in development would not be enhanced by the continuation of present cable technology through sale to telephone companies.

Thus, telephone companies should be prohibited from purchasing existing cable companies thus assuring competitive entry. Phone video offerings should be restricted to switched phone service.

Local exchange carriers should also be permitted to offer electronic yellow pages. Publication of yellow pages has historically been very profitable and it is likely that the electronic version would do equally well. Such a service would provide businesses with the ability to advertise sales and special promotional offerings on a timely basis. A video version of the yellow pages could also offer demonstrations, explanations of complex products and processes and provide for interactive inquiries. Carriers might well find that their ability to develop and provide such a service could justify rapid deployment of switched glass fiber to the local loop.

#### **LEGISLATIVE CONSIDERATIONS**

The 1984 amendment to Section 613(b) of the Communications Act of 1934 allows phone companies to build common carrier transport facilities within their service areas. Thus, it appears that amendment or repeal of Section 613(b) is not necessary. However, the phone companies are not authorized to provide video programming under the 1984 Act in their own service areas.

Section 621 of the Act would probably need amendment since it permits a franchising authority to award one or more franchises for cable television program service. In the case of multiple programmers, or "operators" who elect to transmit via the phone common carrier, the usual franchising process would be impractical. The franchising authority should not be in a position to deny telephone company entry thus thwarting a federal policy. There are compelling arguments against requiring franchising of phone common carriers under the cable provisions of the Communications Act. A telephone common carrier should not be considered a cable system under the 1984 Cable Act so as to enable it to provide switched video or broadband services to the public without a franchising requirement. In short, video programmers using switched phone common carrier transmission facilities should not be required to become a local video franchisee.

#### **SUMMARY**

Summarizing the legislative and regulatory actions necessary to assure an equitable, competitive TV marketplace preserving universal free TV services:

1. Remove MFJ restrictions on information services for BOCs subject to certain conditions such as Computer III requirements of comparable treatment for all enhanced services. BOCs to provide video service on a common carrier basis. BOCs would not be permitted to provide video programming as video programming is defined in the Cable Act.
2. Modify 1984 Cable Act to enable video programmers to use phone common carrier facilities without requiring franchise permission from municipality or state. Common carrier facilities should be universally available to programmers under normal tariff provisions.
3. Prohibit telephone companies from purchasing existing cable systems thus assuring a competitive marketplace and also encouraging developing of a switched fiber network.
4. Enact must carry legislation for conventional cable systems assuring station licensees access to the public they are licensed to serve.
5. We believe it serves the public interest that all local broadcast signals be available on the switched fiber network at reduced tariff rates. Reduced tariff rates are justified because of government requirement that local broadcasters serve the public interest.



I plan to propose a full en banc FCC hearing on all aspects of the telco issue after the new commissioners are confirmed. The hearings will seek testimony from the best informed leaders from broadcasting, cable, telephone companies, Justice Department antitrust division, and also from liberal and conservative think tank experts. The hearings will reinforce and complete the FCC telco record on this complex issue and serve as an informational process for new commissioners. The FCC findings and recommendations will then be forwarded to the Senate and House Communications Committees for legislative consideration. If new commissioners are in place by early fall, the en banc hearings could be scheduled for December or January. This will avoid any rush to judgment and more importantly provide a complete record representing various expert viewpoints on which to base a well informed, practical decision which best serves overall public interest on this contentious issue.

If Congress sees fit, it could now proceed further with legislative proposals eliminating many of the restrictions of the MFJ except for video programming.

Later, the findings and the transcript of FCC hearings would be available for congressional consideration for comprehensive telco legislation.