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STATEMENT OF RICHARD E. WILEY, CHAIRMAN
FEDERAL COMMUNICATIONS COMMISSION
Before the
SUBCOMMITTEE ON COMMUNICATIONS
of the
HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

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Mr. Chairman and Members of the Subcommittee: Thank you for permitting me to present the Commission's views on the subject of cable television and to explain briefly the regulatory approach which the Commission has undertaken for the orderly development and integration of this relatively new technology into a national communications system. With me today are my fellow Commissioners: Robert E. Lee, Benjamin L. Hooks, James H. Quello, Abbott M. Washburn, and Joseph R. Fogarty. We welcome the opportunity to participate in these hearings which have provided a useful forum for examination of the complex issues posed by cable television and other communications technologies today.

At the outset, let me say a few words about the recent report prepared by the Subcommittee staff which has stimulated debate on cable television and has provided an opportunity for a worthwhile exchange of ideas. The report expresses several fundamental differences with our regulatory

approach but there are also many areas in which we agree. We agree, for example, with the proposition that cable television can offer added diversity in television programming as well as other new services made possible by its broadband capacity. However, cable's development should not be at the ultimate expense of the public interest by substantial reduction of the basic service which the American public now receives by means of conventional television broadcasting. In this regard, as the Subcommittee staff report acknowledges, regulation in some degree is essential to assure that the public interest is not impaired. Thus, cable television's potential to compete in the communications marketplace with other technologies should be allowed consistent with "free enterprise" principles, except in those areas where regulation is realistically necessary to protect the public interest. Our differences, perhaps, lie in defining this "reasonably necessary" degree of regulation.

As you know, the Commission is entrusted with the responsibility "to make available . . . to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication system . . .," 47 U.S.C. Section 151. Its jurisdiction under the

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Communications Act extends over "all interstate and foreign communication by wire or radio," 47 U.S.C. 152(a). Since the Communications Act does not set forth specific policy guidelines applicable to cable television and since the Commission's jurisdiction over cable depends on the extent that cable regulation is "reasonably ancillary" to broadcast regulation as developed in two U.S. Supreme Court decisions, United States v. Southwestern Cable Company, 392 U.S. 157 (1968), and United States v. Midwest Video Corporation, 406 U.S. 649 (1972), the Commission has endeavored to adopt policies which are consistent with the general purposes and spirit of the Act. However, while the Commission's jurisdiction is derivative, our policy for cable television has endeavored to assist its development as a unique medium, different from broadcasting, common carrier or other forms of communications.

The Commission has regulated cable television formally for almost a decade. From this experience, we have found that cable is an evolving industry, subject to continuous technical innovation, and capable of expanding its vision to encompass increasing community needs. From its rudimentary beginnings as a service for improved television reception in rural areas, cable has developed to the point where it now serves in excess of 10 million television homes in this country -- one out of every seven --

and provides programming delivered via satellite to a substantial number of the approximately one million pay cable subscribers. Indeed, cable television is one of the leaders in developing its own nation-wide satellite network. Thus, cable television, challenged both by technological advancement and economic necessity, is capable of providing new and diverse programming services to the American public and is already competing with other regulated communications industries to capture the consumer's attention. Yet, as a practical reality, the "wired nation" remains a considerably distant prospect.

Changes in regulation at the Commission have reflected a growing recognition that cable can be -- and in many cases already has become -- more than a broadcast re-transmission service. As we stated in 1970: "Cable television offers the technological and economic potential of an economy of abundance." Commission regulation of cable television has sought to insure that this dynamic and innovative technology will serve the public interest by reliance on two fundamental principles:

1) Regulation of the industry must be sufficiently flexible to admit of change; and

2) Cable should not be regulated without regard to other communications media.

The Cable Television Report and Order, 36 FCC 2d 143 (1972), in our opinion, has contributed substantially to the realization of those aims. It is not a perfect document by any means nor was it

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intended to be the Commission's final word on the subject. This four-year-old report, however, does represent the first comprehensive nation-wide regulatory plan for cable television. It purposely provided for the development of cable within the existing national communications structure. In the Report and Order, the Commission stated:

> Cable television is an emerging technology that promises a communications revolution. Inevitably, our regulatory pattern must evolve as cable evolves -- and no one can say what the precise dimensions will be. This Report and Order represents the amount and the substance of regulation that we believe is essential, at this stage, for the orderly development of the industry. We have taken long overdue first steps after more than three years of exhaustive inquiry. (Paragraph 189).

This Report was the product of substantial analysis and regulatory experience over a number of years. Its objective was to implement the Commission's overall policy of opening up cable's potential without undermining the foundation of the existing over-the-air broadcast structure on which a majority of the public relies for basic television service.

It was evident, however, that our 1972 conclusions would not stand for all time. Indeed, based on continuing experience and market-place evolution, we have been able to determine -- in just four short years -- that considerable reevaluations and changes in the 1972 rules should be effected. Indeed, important reforms have taken place in all of the major areas of the Report and Order including broadcast signal

carriage, technical standards, access channel requirements and federal/state/local relationships. In this connection, I have included as Appendix A a list of the changes we have made in our cable regulations over the last several years (beginning with the formation shortly after I became Chairman of our Cable Reregulation Task Force). Most of these changes have been "de-regulatory", seeking to permit the natural functioning of the communications marketplace where that could be done without undue harm to the existing structure.

I also would like to emphasize that this process of reregulation will, and must, continue. We are committed to removing every Commission regulation which, in our opinion, is not necessary to protect an established public interest value.

Allow me to now detail our basic regulatory program for cable television (including recent changes) in a number of significant areas.

Signal Carriage

While the Commission has made a determination that the public interest is served by maintaining a healthy broadcast service, it has made substantial relaxations in the rules limiting the numbers and types of broadcast signals carried by cable systems, as well as the manner of such carriage. For example, as part of our ongoing reregulatory program, the Commission: (1) eliminated the complex "leapfrog" rules which had restricted the choice of distant television broadcast signals for importation; (2) revised its rules to allow the unrestrained carriage of "specialty stations"; (3) permitted the additional carriage

of late-night and network news programming; and (4) greatly liberalized the network program nonduplication rules by exempting smaller cable television systems and by providing for dual-channel carriage on cable systems of such network programming.

The Subcommittee staff report concludes that the Commission's signal carriage rules have been overly restrictive and protective of broadcast interests. It recognizes, however, that overall diminution of broadcast service should be avoided. Thus, we see any disagreement largely as a matter of best means to an end rather than a conflict over basic goals. Broadcasting today is a nearly universal medium in this country, relied upon by virtually every member of the public. At the same time, recognizing that a nation-wide broadband communications network is also in the public interest, the Commission has sought to foster cable television's orderly growth. We do not believe that these goals are mutually incompatible but, admittedly, efforts to achieve them necessarily involve the Commission in a very difficult balancing process. Moreover, this process is a continuing one. Our rules are not written in stone and, as indicated, they have been subject to continual change and evaluation. As further study and developments suggest, and as the public interest dictates, additional modifications will be made.

We do not believe, however, that elimination of all signal carriage restrictions would serve the public interest at this time. Such a policy presents a serious risk that a substantial number of

broadcast stations, if not forced off-the-air, would at least be compelled to reduce service without assurance of adequate replacement from other sources. The Subcommittee staff has suggested that this problem should not be handled through across-the-board rules applicable throughout the country, but rather through ad hoc rulings based on the the circumstances which exist in individual communities. This approach has been tried by the Commission in the past in connection with its 1966 rules. As I understand the history, nearly all the participants came to believe that this ad hoc case-by-case approach, with its elaborate pleadings and expensive, time consuming, and sometimes indeterminative hearings, ought to be replaced by rules of more general applicability. This approach was in fact abandoned in an attempt to speed up the institution of cable service.

We believe, moreover, that the present regulatory structure is flexible enough to accommodate unusual circumstance by making available special relief where it is needed as the result of unique characteristics of individual communities. It also should be noted that the existing procedure does permit the selective amendment of the signal carriage rules, such as the elimination of the leapfrogging rules, when the evidence persuades us this can be done without fundamental harm to broadcast service to the public.

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Pay Television

Last year, the Commission modified the pay-cable and over-the-air subscription television rules which apply where a per-channel or per-program charge is assessed in addition to regular monthly rates. These modifications make considerably more product available to pay-cable without a substantial likelihood of program "siphoning" from conventional television. The rules expand the period of cable access to new films from two to three years following theater release; expand the access to films over ten years old from only twelve per year to the thousands not shown on conventional television in a local market during the preceding three years; make every film, regardless of age, available if under contract to conventional television; and expand the availability of sports events including those of the major professional leagues. In addition, the Commission initiated a proceeding on alleged "warehousing" of feature films by broadcasters, and on exclusivity practices between broadcasting and cable. And the Commission's most recent action in this area totally eliminates the restrictions on the use of series-type programming on pay-cable. These actions represent what the Commission believes to be the appropriate balance between the public interest in maintaining the availability of programming now found on conventional television and the public interest in allowing for the development of the emerging pay technologies.

The Subcommittee staff report agrees with the Commission's concern over the dangers of program-siphoning, but concludes that no product restrictions are needed at this time. Instead, the report concludes that the Commission should monitor the situation so that if and when any significant threat of siphoning occurs, appropriate remedial action could be taken. However, a principal consideration in the Commission's approach is to prevent substantial siphoning before it actually occurs. Action taken after the fact could raise difficult questions concerning interference with vested contractual rights or disruption of the established viewing patterns of cable subscribers accustomed to a given type of pay-cable programming. We believe that the pay-cable rules address such concerns in a reasonable manner without depriving pay-cable of needed program product. However, as with all of our regulations, the pay-cable and subscription television rules must be subjected to continuing review as to whether they strike appropriate balance in the public interest.

Access to Non-Broadcast Channels

The Commission has taken deregulatory steps in revising the 1972 cable television rules under which new systems located in major markets, and existing systems in these markets by March 31, 1977, were required to provide public, educational, local government, and leased access channels and services. The 1972 rules were intended to assure

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that the public would have an opportunity to participate in a mass communication medium and were a part of the Commission's overall objective of integrating cable into the national stream of communications. The newly-revised "re-build" and access rules now apply in all markets and: (1) exempt completely all cable systems with fewer than 3,500 subscribers; (2) reduce the required number of access channels where capacity is limited; (3) delete the two-way channel capacity requirement except for new systems with more than 3,500 subscribers; and (4) defer to 1986 the standard of 20-channel capacity for systems of more than 3,500 subscribers. These changes have relieved a substantial number of cable systems from severe economic constraints and now allow redirection of their resources for the development of other new and diversified services to the public. At the same time, the Commission's objectives of encouraging diversity and public accessibility, which underlay the initial adoption of access rules, are not abandoned.

One aspect of the cable television access program developed by the Commission deserves particular comment. This concerns the regulation of the program content of such channels -- particularly obscene or indecent matter -- by federal and state authorities. The Commission has adopted rules which prohibit the cable operator from interfering with the content of any programs appearing on the access channels except in limited instances. One exception involves obscene or indecent matter. To avoid any misunderstanding as to the

interpretation of the rules, the Commission this past June issued a clarification emphasizing that it is not only a cable operator's responsibility to have regulations prohibiting the presentation of obscene or indecent material on access channels, but also to take reasonable steps to keep such material off the cable system. The Commission also has recommended legislation which, for the first time, would extend to cable television the federal statutory proscription against obscenity and indecency. Under the proposed legislation, persons who provide material for access presentation would be subject to criminal prosecution.

Federal-State/Local Relations

In the Commission's 1972 report, the essentially dual-jurisdictional (federal-local) regulatory scheme adopted was characterized as "creative federalism." This description, Mr. Chairman, was something more than rhetoric. It recognized the beginning of an experiment -- a pragmatic search for the boundaries of legitimate interests in cable television at different levels of government. Since then, the Federal-State/Local Advisory Committee (FSLAC) has delivered to us strong majority and minority reports, differing chiefly over the degree to which the federal government ought to involve itself with state-versus-local allocation of cable responsibilities in areas not fully occupied by the national authority. Proceeding from the FSLAC report's consensus that duplicative regulation of cable TV

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ought to be avoided, we sought comment on whether the Commission somehow should force states and cities to choose which of them were going to do what -- if anything -- to the medium known as cable. When that inquiry was released, in December of 1974, I expressed my concern that we not nibble cable to death through endless study of its jurisdictional complexities, but instead be prepared to bite some bullets.

Now, nearly two years later, the Commission can point to several significant actions in the federal-local area. And I, personally, am looking forward to even more movement in the near future. By mid-1975, we had concluded that the battle against duplicative regulation could be better fought at home on the federal front, so to speak, than by legally dubious sallies into the foreign fields of state and municipal government. We promised, first, "a thorough subject matter review of existing (FCC) regulations to determine where de-regulation might be appropriate." Pending completion of this review, which is still very much in progress, we have deferred any final recommendation upon a second possible approach to duplicative regulation: national cable legislation.

Since deciding a year ago to try to reform its own rules in the federal-local area, the Commission has:

--Voted to make it optional with local and/or state franchising authorities whether and how they regulate

regular subscriber rates, simply eliminating former Section 76.31(a)(4) of the 1972 rules which made such local rate regulation mandatory;

--Declared that franchise fee provisions inconsistent with Section 76.31(b) would no longer be cause for delay in federal certification of cable systems, but would simply be declared null and void for FCC purposes (an approach we had taken earlier for inconsistent franchise provisions in such pre-empted areas as access and channel capacity, auxiliary-service rates and technical standards);

--Determined to resolve by early fall the important cable system "definition" proceeding described elsewhere in this testimony.

Another important matter with implications for Federal-State relations is the complex question of cable pole attachments. As you know, the Commission was instrumental in encouraging pole attachment negotiations between cable interests and public utilities, and in developing a rental formula which contributed to last Fall's agreement between the American Telephone and Telegraph Company and the National Cable Television Association. Subsequently, following the Commission's determination that the present Communications Act did not give it the authority to regulate pole attachments on power

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poles -- and recognizing that the AT&T-NCTA agreement of 1975 did not cover all telephone pole owners and cable operators -- we instructed our staff to conduct a detailed study of the economic, administrative and jurisdictional issues connected with this controversy. As part of that study, I called a meeting with representatives of state regulatory agencies to discuss their efforts in the area and to obtain their views and suggestions. Most recently, of course, the Congress -- under the leadership of your Subcommittee -- has moved legislatively to resolve jurisdictional uncertainties and to give guidance in the implementation of pole attachment regulation. Through formal comments and less formal contacts between Subcommittee and Commission staff members, we have endeavored to assist in this undertaking. The Commission, of course, stands ready to carry out the Congressional mandate of this act. In this connection, we expect that our planned meeting with state regulators -- which was postponed in deference to Congressional consideration of a pole attachment bill -- will be of value. In conclusion, Mr. Chairman, let me make clear my belief that the cable industry needs, and should have, some remedy against the potential hazards inherent in virtual monopoly power over pole attachment prices.

Mr. Chairman, it should be clear from what I have said thus far that we have no disagreement with -- but instead support -- the first principle from the Subcommittee staff's study of the federal-

local area, namely that "the federal regulatory role should be confined to those aspects requiring national delineation of standards" and that "where federal pre-emption is called for . . . the logic of pre-emption should be explicitly stated." For our part we are still experimenting, still searching pragmatically, for those aspects of cable communications requiring "national standards." As I mentioned, we have decided that local rate regulation is no longer such an aspect, but that franchise fees remain a matter of some federal concern. We have made it plain that we are not going "all federal" or "all local" in the near future, without persuasive reason to do so. Our approach, hopefully, will continue to be empirical rather than doctrinaire.

This should apply with particular force, let me suggest, to the problem of duplicative regulation of cable television at non-federal levels of government. The Subcommittee staff takes the position that three-tier regulation (federal, state, and local levels) has "no inherent detriments" but could confer "considerable benefits." Indeed, it finds that "no basis exists for the enactment of legislation proscribing three-tier regulation." The Commission has not reached any final conclusion in this matter nor would we seek to impose from the federal level a decision as to how the states and localities might choose to allocate their respective responsibilities for cable television. It is claimed that cable television is subject to excessive

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regulation at various levels of government. The Subcommittee staff has endorsed a three-tier regulatory approach and has recommended creation of state cable commissions. However, such an approach may not always be consistent with the goal of avoiding unnecessary and duplicative regulation.

Separations Policy and Other Future Considerations

I have attempted to review for you the course that we set for cable in 1972 and the changes in that course over the past four years. To predict the future is more difficult. Technical prognostications that seem reasonable today may well prove incorrect in the future. Recommendations based on such assumptions can become swiftly obsolete. For these reasons, we believe that the staff recommendations concerning the appropriate structure of the cable television industry of the future may be premature. As noted earlier, the Commission in the past has given considerable thought to a status for cable more closely resembling communications common carriage, and we will continue to study this matter. In addressing the need for a policy separating control of content from control of transmission -- initially recommended in the President's Cabinet Committee Report on Cable Communications -- the Subcommittee staff acknowledges that to restrict cable operators from leasing, programming, or otherwise processing financial interests in cablecasting would be harmful to the short range development of cable. The Subcommittee staff believes

that an immediate separations policy during cable's "infancy" may well have the result of retarding cable television since the cable entrepreneur, the one most motivated to experiment and to risk venture capital on new auxiliary services, would be reluctant to do so in such an atmosphere in major television markets. The Commission agrees that the cable entrepreneur should be given latitude and discretion, in order to encourage the development of auxiliary services.

As to the need for a separations policy in the future, we have reached no conclusions of our own, but are aware of the views of both the Subcommittee staff report and the Cabinet Committee Report. They proceed from the assumption that as the demand for these auxiliary services increases, more independent sources of programming will be made available and, ultimately, this will create a substantial potential for abuse in the form of unfair competitive practices in establishing priorities for channel use and lease rates. Thus, the staff report recommends that Congress should act to require the Commission to implement a separations policy "as soon as the public interest would be served" thereby, and that in no event should the cable operator be engaged in programming or have any financial interest in entities using leased channels on their systems "ten years after the date of enactment." The staff report mentions that such "separations" legislation should empower the Commission to act sooner than the ten-year period if necessary, but that the cutoff date should not be extended except by

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Congressional action upon a clear and convincing showing to the Congress of the need for such an extension.

The Commission questions the appropriateness of a ten-year limitation or any other arbitrary deadline for implementation of a separations policy. The Commission believes that imposition of such a policy at this time, in the absence of a pattern of anti-competitive practices, could have a substantial counter-productive effect. Fear of divestiture before recoupment of capital investment might well discourage the development of new services.

Mr. Chairman and Members of the Subcommittee, two pending matters deserving of particular comment are the rulemaking on the definition of a cable system and the approaching deadline of March 31, 1977, by which all cable systems not yet certified beyond that date must be reviewed for compliance with franchise and other federal standards. In the definitions proceeding, we expect to clarify the applicability of our rules to cable TV service for certain special residential situations. In addition, we have asked for comment on the present 50-subscriber threshold at which a cable system comes under our rules, and for consideration of the creation of a class of "smaller systems" less closely regulated than larger systems. Finally, the definitions rulemaking suggests defining cable systems not necessarily by the communities in which they are located but by their economic or technical integration (e.g., at the "headend"). With respect to the 1977 certification or recertification process that

will involve several thousand cable systems, we believe the deadline offers us the opportunity to consider creatively the nature and extent to which this type of federal review -- however much warranted in the days when most applicants were new -- continues to apply to circumstances where the bulk of applicants are relatively mature systems.

Another aspect of the future concerns the need some have perceived for comprehensive cable legislation to be enacted by the Congress. As recently stated to another House subcommittee, the "ancillary to broadcasting" test for Commission cable television regulatory authority provides a reasonably adequate guide for the Commission to follow. While this guide is not precise, and may not be as developed for cable as for other fields under the Commission's jurisdiction, it nevertheless provides a framework in which the Commission's policies can develop. Whether or not it becomes necessary for the Commission to recommend comprehensive legislation, we shall continue to submit selected cable legislative proposals as these are perceived to be needed in the public interest.

Forfeiture Authority

One of these proposals was embodied in H. R. 10620, now incorporated into H. R. 15372 along with the pole attachment legislation. Mr. Chairman, the full text of my testimony on this topic is appended to this prepared statement. Briefly, let me simply commend you and the full Committee for adopting the forfeiture authority additions and revisions contained in H. R. 15372. With respect to the particular subject of this hearing, cable television, we have testified that the

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legislation which the Senate has adopted -- and which your Subcommittee has guided to a vote in the House -- will give us a more flexible regulatory environment than now is possible under the cumbersome and time-consuming procedures of cease and desist orders and hearings. Without forfeiture authority as to cable rule violations, we have been confronted frequently with the extremes of, say, issuing warnings only, or, at the other end, setting relatively small matters for evidentiary hearing. I have stated before, and would re-emphasize here, my own expectation that enactment of a forfeiture bill could well lead to new and substantial deregulatory efforts, such as the streamling or perhaps even elimination of the certification and recertification processes. In fact, with the March, 1977 deadline approaching for cable systems not yet certified beyond that date, the Commission will be undertaking a comprehensive re-examination of present federal franchise standards, as well as other requirements of the certification process.

To the extent that any of our rules are unclear, and thus might give rise to fear of penalty for even unwitting violation, we shall attempt to clarify them. Indeed, such clarification and simplification has been a major thrust of our entire re-regulatory program for cable television and other services -- through which we have attempted to make our rules serve the public, rather than vice versa.

Finally, I want to comment on the increasing use of Domestic Satellite Systems to distribute cable television programming. Our present policy requires that satellite earth stations have a dish diameter of at least nine meters, or roughly 30 feet. This standard was adopted in 1970, based on the then current technology, the necessity for avoiding interference to and from adjacent satellites spaced at 4 degree intervals along the geostationary orbital arc, and the need to establish a sufficient number of orbital slots to satisfy our "open skies" policy. We are now revisiting the nine meter policy in response to Petitions for Rulemaking filed by both the cable and broadcast television industries. The Commission has no preconceived notion as to the outcome of these proceedings which will examine both technical and administrative aspects of the matter. With our concern that regulation be maintained only to the extent necessary, we are reviewing all aspects of our regulation of receive-only earth stations, including the administrative requirements placed on receive-only earth station operators. Moreover, we will determine whether technology or spectrum needs have changed sufficiently to modify the current nine-meter limit. We must reaffirm, however, that a primary objective of our policies will continue to be the efficient utilization of the frequency spectrum and the geostationary orbital arc. We hope to have definite results from these inquiries within the next several months.

Mr. Chairman, I thank the Subcommittee for its attention, and I am prepared to respond to your questions.

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APPENDIX A

RECENT CABLE TELEVISION REGULATORY ACTIONS

(1) May 15, 1974 Re-Regulation Task Force Announcement of the creation of the Cable Television Re-Regulation Task Force, instructed to review the Commission's experience with all cable television regulations, procedures and forms, seeking to eliminate unnecessary requirements and to simplify complicated procedures, with particular attention directed toward relief for small cable television system operators.

(2) May 17, 1974 1977 Task Force Announcement of the creation of the 1977 Task Force, instructed to study problems attendant to March 31, 1977 deadline for system reconstruction and access requirements and to inquire into the feasibility and necessity for these requirements.

(3) September 6, 1974 Late Night Programming Amendment of signal carriage rules to permit importation of "late-night" programming without restriction as to the television source of that programming.

(4) September 25, 1974 STA Delegation Adoption of a new rule to govern the scope and processing of requests for special temporary authority in order to achieve expedited treatment.

(5) October 22, 1974 Technical Preemption Action preempting the field of technical requirements and offering cable systems the opportunity to seek special relief from any pre-existing technical standards inconsistent with the Commission's policies.

(6) November 21, 1974 Mandatory Originations Deletion of the requirement that cable systems engage in local originations.

(7) December 3, 1974 Political Cablecasting Reports Deletion of requirement that cable systems file Biennial Survey of Political Cablecasting reports.

(8) December 17, 1974 Line Extensions Amendment of rules to leave the responsibility for implementation of cable system line extension policies to the operator and the local authority.

(9) January 16, 1975 Franchise Duration Decision to retain 15 year limitation on cable franchise terms, but cognizance of need for longer franchise periods in individual situations where waivers might be justified.

(10) January 31, 1975 TV Cross-Ownership Requested the Court of Appeals to remand Commission rules ordering total divestiture of all co-located television-cable operations. And, on April 4, 1975 announced that divestiture would be ordered only in those relatively few cases where total monopoly exists.

(11) February 12, 1975 Staff Delegations Substantial expansion of the delegations of authority to the Chief of the Cable Television Bureau, allowing more expeditious processing of applications and petitions.

(12) March 12, 1975 Newspaper Cross-Ownership Declined to order the divestiture of co-located newspaper-cable operations and deferred adoption of any rules proscribing such joint operations in the future.

(13) March 28, 1975 Pay Cable Adopted new set of regulations for pay cable which, inter alia, expanded the use of new films from 2 to 3 years, expanded the use of films over 10 years old, made every film available regardless of age available for pay if under contract to conventional television, expanded the availability of sports events, permitted "series" not carried on conventional television, and initiated a new proceeding on "warehousing" and exclusivity between broadcasting and cable.

(14) April 4, 1975 Network Non-Duplication Adopted new, less restrictive network non-duplication rules permitting dual channel carriage, establishing smaller mileage zones for protection, and raising the exemption level for small cable systems from 500 to 1000.

(15) June 6, 1975 Public Inspection Files Shortened retention period for cable systems to maintain public inspection files and eliminated duplicative requirements.

(16) June 27, 1975 New Contours Issued notice of proposed rule making, proposing elimination of use of signal strength contours and substitution of fixed mileage zones to promote administrative ease, and consideration of greater cable carriage of UHF stations. (Matter pending).

(17) July 9, 1975 Cancellation of 1977 Rebuild Ordered cancellation of 1977 rebuild deadline, at an estimated cost saving to the cable industry of 430 million dollars.

(18) July 9, 1975 Mountain Time Zone As a further aspect of the network non-duplication proceeding (Item #14, supra), eliminated "same day" network non-duplication protection and adopted simultaneous protection only.

(19) July 9, 1975 Sports Blackout Conclusion of rule making proceeding, final Commission action represents major withdrawal from earlier proposals; only limitation is deletion of distant game when local team plays at home.

(20) July 29, 1975 Definition of a Cable System Issued Notice of Proposed Rule Making in Docket No. 20561 proposing major deregulatory relief for smaller systems by raising the exemption level or the creation of a smaller class of cable system to which limited regulation would apply, or some combination of both of these proposals; a clarification of the definition with respect to various multiple dwelling units, and the possible expanded use of the "headend" concept for regulatory purposes rather than the present method of defining each separate community as a separate cable system. (Matter pending; scheduled for discussion on Fall, 1976 calendar).

(21) July 30, 1975 Late Night Programming/Reconsideration Upon reconsideration of its earlier action (Item #3, supra), the Commission further relaxed the availability of programming pursuant to this rule.

(22) July 30, 1975 "Significantly-Viewed" Signals As a further aspect of its network non-duplication proceeding (Item #14, supra), the Commission initiated a proceeding to consider exemption of "significantly viewed" signals from the non-duplication rules. (Matter pending and currently under discussion).

(23) August 8, 1975 Financial Report New FCC Form 326, "Financial Report", adopted; reporting burden on operators eased, new forms more closely follow normal bookkeeping procedures, and consolidated reports permitted.

(24) August 28, 1975 Annual Report New FCC Form 325, "Annual Report of Cable Television Systems", adopted, reducing certain paperwork and increasing processing efficiency and industry data base.

(25) September 9, 1975 CARS Application Form New FCC Form 327 adopted, represents first application form promulgated solely for Cable Television Relay Service applications, will aid applicants and will expedite processing.

(26) September 17, 1975 Syndicated Exclusivity Amendment of syndicated exclusivity rules to exempt smaller systems under 1000.

(27) September 29, 1975 Pole Attachments With the assistance of the Commission and its staff, the National Cable Television Association and AT&T reached agreement on telephone pole rates.

(28) October 8, 1975 Non-Duplication Notification Amendment of non-duplication rules easing burden on broadcasters requesting network non-duplication protection -- monthly notification permissible instead of former weekly requirement.

(29) October 9, 1975 Significant Viewing Surveys Amendment of rules to allow county-wide significant viewing surveys instead of surveys for all individual communities, less burdensome and cheaper for cable operator.

(30) October 31, 1975 Pay Cable/Series Deletion of former restrictions upon carriage of series programs on pay cable.

(31) November 4, 1975 Sports Blackout/Reconsideration Upon reconsideration of its sports blackout action (Item No. 19, supra), the Commission amended rules to permit the substitution of other programs during blackout periods.

(32) November 12, 1975 Editorial Changes Amendment of the cable rules clarifying sections pertaining to dismissal of petitions for special relief, requests to add signals, and maintenance of public inspection files.

(33) December 19, 1975 Leapfrogging Deletion of restrictions upon source of distant independent signals permitted to be carried by cable systems, resulting in significant lessening of economic burdens to cable operators associated with carriage of signals consistent with former rules, e.g., microwave cost savings, and further resulting in greater diversity of programming.

(34) December 22, 1975 Additional Network News Amendment of signal carriage rules permitting cable carriage of "second" network news feeds when no local news is being carried, resulting in "time diversity."

(35) February 18, 1976 Public Notice Clarification and easing of the cable rules with respect to service and public notice requirements.

(36) February 26, 1976 Recordkeeping/Technical Measurements Amendment of the cable rules relaxing its recordkeeping and technical measurements requirements.

(37) February 26, 1976 "Specialty" Stations Amendment of the signal carriage rules by the creation of a new "class" of "specialty" station (engaged in substantial foreign language, religious, and automated programming) entitled to "bonus" carriage by cable systems.

(38) April 1, 1976 Technical Standards Initiated a new proceeding proposing modification and relaxation of cable television technical standards, including requiring fewer measurements to be taken by systems serving several communities.

(39) April 1, 1976 Subscriber Rate Inquiry Initiated a broad inquiry into the manner in which subscriber rates are established, not for potential regulation by the Commission but to establish a broad data base available to all interested parties.

(40) April 1, 1976 Access and Channel Capacity Requirements As a companion action to its cancellation of the 1977 rebuild deadline (Item #17, supra), the Commission amended its cable reconstruction, access and channel capacity requirements, applying its requirements only to larger system, allowing 10 years for rebuilding, and permitting "composite" or "shared" access in the interim, with no rebuilding required solely for access purposes. Also, other rules in this area were deleted or modified.

(41) May 12, 1976 Franchise Fees Declared franchise fees in excess of 3% to be "null and void" unless waiver granted, easing the certification process for both operators and Cable Bureau staff.

(42) May 19, 1976 CARS Channels Initiated a proceeding proposing the more efficient use of Cable Television Relay Service channels. (Matter pending).

(43) May 19, 1976 Alien Ownership Adopted a Report and Order declining to prohibit alien ownership of cable television systems.

(44) June 2, 1976 Obscenity Issued a clarification of its rules regarding the prohibition of obscenity on cable television access channels, and noted that the Commission is recommending legislation to provide that those who use access channels be liable to criminal prosecution for programming obscene or indecent material.

(45) June 30, 1976 "Specialty" Stations/Reconsideration Upon reconsideration of its "specialty" station action (Item #37, supra), the Commission further amended its signal carriage rules to permit carriage of individual "specialty" programs without prior certification.

(46) July 14, 1976 CARS Rules Adopted editorial changes relaxing and clarifying certain CARS rules.

(47) July 29, 1976 Subscriber Rate Regulation Adopted a Report and Order deleting the requirement that local franchising authorities must regulate cable subscriber rates; thus, non-federal regulation of rates for basic subscriber service and the manner in which it is performed is now optional.

APPENDIX B

FORFEITURE AUTHORITY
(Originally prepared for delivery August 4, 1976)

Section 503 of the Communications Act now provides for forfeitures in the broadcast services, while Section 510 provides separately for forfeitures applicable to nonbroadcast radio stations. H.R. 10620 would repeal Section 510 and place all classes of forfeitures under Section 503. Additionally Section 503 would be enlarged in scope to cover persons subject to the Communications Act but not now under the forfeiture provisions -- such as cable television systems, users of Part 15 or Part 18 devices, persons operating without a valid station or operator's license, and some communications equipment manufacturers.

The proposed amendments would make three additional alterations in the existing forfeiture provisions. First, the limitations period for the issuance of notices of apparent liability would be extended: for non-broadcast licensees and others not subject to Commission licensing requirements, from ninety days to one year; and for broadcast licensees, from the present one year to one year or the current license term, whichever is longer. Second, the maximum forfeiture that could be imposed for a single offense would be raised to $2,000, while the maximum amount that could be imposed for multiple offenses set forth in any single notice of apparent

liability would be $20,000 in the case of a common carrier, broadcast licensee, or cable system, and $5,000 in the case of all other persons. Existing section 503 provides maximums of $1,000 for single offenses and $10,000 for multiple offenses by a broadcast licensee, while those persons subject to existing section 510 are currently liable for $100 in the case of single offenses and $500 for multiple offenses. And third, H.R. 10620 authorizes the Commission to mitigate or remit common carrier forfeitures. Since we have such authority with respect to all other forfeitures, it seems reasonable to allow the Commission to exercise its judgment in this area also.

Mr. Chairman, we believe the proposed changes in the Commission's forfeiture authority are necessary to our regulatory efforts. Consider, for example, the problems we have experienced in the cable area because of our lack of forfeiture authority. Without such authority, the Commission's enforcement of its rules is limited to the cumbersome and time-consuming procedures of cease and desist proceedings and, if a cable television operator chooses to disregard the Commission's issuance of a cease and desist order, effective enforcement must await civil contempt proceedings which the Department of Justice must agree to prosecute.

Amending the Communications Act to provide specific forfeiture authority to the Commission in cable television matters will enable the Commission to enforce its rules in an effective and expeditious manner. There are a number of situations which typically involve a violation of our rules for which a speedy remedy is not now available:

a. Violation of network nonduplication rules by failing to protect a local television station's network programming.

In the proceedings leading up to the First Report and Order in Docket 19995, 52 FCC 2d 519 (1975), many broadcasters complained about the Commission's lack of forfeiture authority in this area. (Section 76.92 of the Rules);

b. Commencement of cable television operations, or continuing cable operations beyond March 31, 1977, without first obtaining the required certificate of compliance. (Section 76.11);

c. Carriage of signals illegally. Some cable television systems have unlawfully added television signals or commenced the carriage of such signals which the rules do not permit. After the passage of a number of years, it may be impractical to order the termination of service, but a forfeiture may surely be warranted. (Section 76.11, 76.57, 76.59 and 76.61);

d. Failure to conduct the annual performance tests our rules require. The Commission has adopted performance standards to ensure that cable systems provide high quality service and do not interfere with other modes of communications. Assessing forfeitues will put teeth into these requirements. (Sections 76.601 and 76.605);

e. Failure to file annual financial and ownership reports and forms. (Sections 76.401, 76.405, and 76.409);

f. Initiating Cable Television Relay Services (CARS) without a license or even without filing for a construction permit, or failing to adhere to the conditions specified in the construction permit. The Commission issues construction permits and

licenses to applicants in the CARS service, but section 510 of the Act authorized forfeitures only for "off-frequency" operations and failing to respond to official correspondence. (Section 78.11).

Just as in the case of broadcast licensees, it should be emphasized that only a small number of the approximately 8,000 cable systems in the country will ever present occasions for the imposition of forfeitures. The great majority wish to, and do, abide by our rules. With the enactment of necessary legislation, the Commission will possess enforcement authority over cable comparable to that which it exercises over other media of communications. Furthermore, enactment of a forfeiture bill to take care of the few "bad apples" might well lead to new and substantial deregulatory efforts such as the streamlining or perhaps even elimination of the certification and recertification processes.

I would also like to make it clear that expansion of our forfeiture authority to cover cable is not the only purpose of this bill. Also important is the extension of forfeiture authority over unlicensed operators. I am sure you are all aware of the increasing popularity of the Citizens Band Radio Service. However, with this increase in popularity, we have been faced with very difficult problems, including those associated with unlicensed operations. Interference, obscenity, over-power operations or other improper conduct, if allowed to continue, could seriously impair the usefulness of this service to responsible citizens.

Except for the Commission's cease and desist authority, enforcement of the Act or Commission rules or orders against such persons now must be by judicial action under section 401 or criminal prosecution under sections 501 and 502. Forfeiture authority should prove to be a much more effective sanction for reaching these unlicensed operators.

The proposed extension of the present time limitation for the issuance of notices of apparent liability is also necessary to our regulatory efforts. Usually, violations of the Act or of the Commission's rules in the non-broadcast services are detected through field office monitoring. When an apparent violation is found, the field office as a matter of practice issues a notice of violation and offers an opportunity to explain or comment on the alleged misconduct. These notices are routinely sent to Washington, where they are checked against the licensee's records. In those cases where there is a history of repeated misconduct, or where the misconduct appears to be willful and sufficiently serious, a notice of apparent liability is issued.

It has been our experience that, because of the increasing workloads in the non-broadcast services and the limited number of staff personnel to review possible violations, it is often impossible to issue a notice of apparent liability within the ninety-day period. Mr. Chairman, you should keep in mind that there are over 2,000,000 authorizations in the Safety and Special Radio Services alone, not to mention the increasing number of individuals who are operating without the required authorizations.

A longer limitation period is also necessary in the broadcast area. While some violations may be found during regular station inspections, present personnel shortages preclude us from making more than one inspection during the three-year license term. Some violations are brought to our attention by complaints sent to the Commission. In these cases, detailed and often time-consuming investigations of the station's operations may be necessary. What is more likely is that violations will be exposed during the Commission's review of the licensee's renewal application, and, in many instances, the one-year period will have elapsed.

Where, for example, the Commission discovers misconduct occurring more than a year earlier, we have only the alternatives of doing nothing or revoking the license, since the statute of limitations for imposing a forfeiture has already run. H.R. 10620 would obviate this problem by allowing the Commission to impose a forfeiture for any violation during the current license term.

Similarly, we believe the increase in maximum forfeitures would also help us in our regulatory efforts. Quite frankly, the currently available forfeitures are unrealistic and totally inadequate to be an effective deterrent to violations by large communications businesses. The same is equally true in the case of other persons, although we do recognize the need for a lower maximum forfeiture in such cases. Furthermore, I can assure you that the

Commission will continue the policy of tailoring forfeitures to the offender and to the nature of the offense.

I would also like to point out a number of procedural protections that have been included in the proposed legislation. To begin with, forfeiture liability would arise only after a person has been served personally or by certified or registered mail with a notice of apparent liability, and has been given an opportunity to show in writing why he should not be held liable. In addition, H.R. 10620 provides special procedural protection for those persons who may likely be unaware of Commission regulations. For such a person, no forfeiture could attach unless prior to the issuance of any notice of apparent liability the Commission has sent a notice of the violation and has provided an opportunity for a personal interview and the person has thereafter engaged in the prohibited conduct. However, I want to make it clear that this special procedure would not be used if the person is engaged in an activity that requires the holding of a license, permit, certificate, or other authorization from the Commission, or is providing any service by wire subject to the Commission's jurisdiction.

Finally, Mr. Chairman I would like to point out that S. 2343 (the Senate companion bill) has already passed the Senate although, in its final form, it is somewhat different from H.R. 10620. Therefore, let me briefly mention the amendments made to the Senate bill --

amendments, I should add, that were made with the Commission's consent.

A number of changes to improve S. 2343 were suggested by the National Cable Television Association. While not all of the suggestions were agreed to, some of them were helpful and constructive. For example, NCTA pointed out that subsections (b)(1)(A) and (b)(1)(B), as drafted, would not have applied the "fails... substantially to comply" test to cable certificate violations as it is applied to other authorization violations. Because it was never the Commission's intent to treat cable in a manner different from other regulated industries, a change in the language of those sections was suggested by the Commission. NCTA also raised a question as to the legality of the imposition of a forfeiture for conduct prior to the enactment of forfeiture legislation under subsection (b)(4). While the Commission expressed its disagreement with NCTA's analysis of the legality of such action, it did not object to amendment of the subsection to make it clear that S. 2343 will be prospective in its effect on cable operators. Clarifying language was also supplied by the Commission to the Senate Subcommittee as to the scope of the special procedural protective device embodied in subsection (b)(3) and as to the applicability of maximum forfeiture under subsections (b)(5)(A) and (B). Additionally, at the request of the Administrative Law Section of the American Bar Association,

language was added to make it clear that the limitations time period in subsection (b)(4)(A) in no event would be longer than three years.

Finally, the Subcommittee staff suggested a number of amendments to S. 2343. Of primary importance is the alternative procedure for enforcement of Commission's forfeitures embodied in subsection (b)(3)(A) of S. 2343 as adopted by the Senate. This alternative procedure would allow the Commission to proceed, as it does presently, with the issuance of Notice of Apparent Liability (with de novo review of the Commission's action by a Federal District Court) or by providing a full adjudicatory hearing before the Commission or an administrative law judge, (with judicial review available, as in the case of all other Commission final orders, under section 402 of the Communications Act.) While the Commission did not recommend this alternative procedure, we expressed no objection to it as long as it is clear that the Commission has full discretion to determine which procedure it will follow.

Mr. Chairman, I think changes such as these, made in response to comments and criticism from such organizations as NCTA and the Administrative Law Section of the ABA, have made S. 2343 a better bill than it was in the version initially recommended to Congress. Thus, I respectfully suggest that this subcommittee consider amending H.R. 10620 to conform to its Senate companion.

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