Approved 2-20-92
Date

MINUTES OF THE House COMMITTEE ON Computers, Communications&Technology

The meeting was called to order by George Dean (Chairperson) at

12:00 Noon on January 29, 1992, 1992 in room 529-S of the Capitol

All members were present except:

Representative Kline - Excused
Representative Mead - Excused
Representative Patrick - Absent

Committee staff present:

Julian Efird, Research
Jim Wilson, Revisor
Diane Duffy, Research
Donna Stadel, Committee Secretary

Conferees appearing before the committee:

Don Low - Kansas Corporation Commission
Karen Matson - Kansas Corporation Commission

Others attending: See attached list.

Mr. Don Low, Kansas Corporation Commission, spoke before the committee in regard to telecommunication regulation; cable television (CATV), 900 Services and Cellular Services.

CATV presently is not regulated by the KCC. The Cable Communication Policy Act of 1984 (a federal act) essentially deregulated CATV rates. It provided that state or localities could regulate basic cable rates, only if there was not effective competition to that particular cable system. Criteria for defining "effective competition" according to FCC in 1985, was a system was subject to effective competition if there were three unduplicated broadcast signals available in that service area. Under that criteria, it was estimated approximately 3% of cable television systems in the country were subject to regulation. Figures for Kansas were not available.

Effective October 1991, however, the FCC propagated a new definition for regulation; to be a competing service, there would would have to be six unduplicated broadcast signals; a wireless or direct broadcast multi-channel service available to at least 50% of the homes it encompassed, and subscribed to by at least 10% of these homes. It is estimated 52% to 61% of systems are subject to regulation, with 18% to 34% subscribers potentially subject to local regulation nationally. Again, state figures for Kansas are not available; however, Mr. Low will check into this and advise the committee of his findings.

Mr. Low continued, that even though a system is not considered to be subject to effective competition, they can still raise their rates 5% annually. Service subject to regulation is only the basic service tier, including the tier providing retransmission of local broadcast channels.

Update of pending legislation in congress was presented and discussion followed. (Attachment 1).

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

900 Services have received much activity on the federal level in regard to regulation. In 1991, the FCC issued rules requiring certain consumer protection. Basically, this required preamble be placed on recorded information announcement disclosing charges and describing what message follows if you continue to listen; or, the fact there would not be a charge if you hang up before a tone/activity takes place. Also required, if content not be of interest to children under 18, there will be a warning caller should hang up unless they have parental consent to make call. The preamble is not required for calls having a flat charge of less than $2.

Discussion followed regarding announcement requiring parental permission. Purpose of this announcement is compliance with FCC rules. Also, state regulations and informal state adopted procedures exist where customers have complained in the past about calls children made without realizing a charge existed.

FCC rules require states be preempt in regard to preamble and require local exchange companies to provide blocking on a free one-time basis to residential customers. If not preempted, states could impose a more stringent requirement than required by the FCC. There are partitions of the FCC decision which have not yet been acted upon--primarily in regard to preemption of preamble requirement. Some states have said they should not be preempted, but be allowed to require more stringent preamble notification. They also believe the question of $2 threshold for requiring preamble is good enough. There are bills pending in congress which would pretty much clarify the FCC regulations with minor additions, such as requiring disclosure of odds of winning a lottery call.

Discussion followed regarding dial-a-lottery and legalities per the FCC/KCC of common carrier's responsibility in providing service. Supreme Court's decision on congressional legislation restricting access to adult content information providers is constitutional, although an act has not been implemented pending final court resolution. It appears there is a requirement that subscriber provide written request for access to the system.

Also discussed was existing regulation of language allowed over the phone and the question of which states regulate 900 numbers. Julian Efird will provide updated information on this to Chairman Dean.

Mr. Low proceeded to give background information on cellular services. He stated radio common carriers were regulated by the commission before 1985, but were subsequently deregulated over a period of several years. Deregulation of radio common carriers was never done in the traditional fashion in terms of rate case regulation or stringent reviews of cost and revenues, due to the fact the services were considered a discretionary service; i.e., more market than cost driven. Commission reviewed rates for

reasonableness, but never did an in-depth audit of cost and expense. It was pointed out, if the commission were to regulate cellular service, we would be preempted from regulating the charges for interline equipment (actual handset). Regulation could be in a range all the way from providing information on what they are doing, to rate increases/decreases in air time, roamer charges, etc. The question exists as to whether cellular service is classified under radio common carrier. This was answered in the affirmative by reference to HB 2958, Section 1c (attachment 2).

Karen Matson, Managing Communications Analyst, Kansas Corporation Commission, appeared before the committee and gave a briefing on two-way interactive video (attachment 3).

Following was discussion concerning types of facilities best for transmitting interactive two-way video, quality resolution and capacity. It was pointed out cost associated to transmit from one point to another is problematic with fiber optic due to its' capability of infinite capacity. The commission has been using an incremental costing approach in some, but not all instances.

The subject of the commission's view of excess capacity was discussed. Ms. Matson explained excess capacity hinges mostly off the question, will the company be able to use the facility in twenty, or thirty years. Why plow ground and put in four/five pair cable, when you can put twenty-five pair cable in and have room to grow. They have a problem when it appears capacity has been installed and it will never be used due to declining population growth, or other events in the area.

Chairman Dean asked Representatives McKechnie, Rand and Meade if they would serve on a sub-committee and look further into the subject of two-way interactive video.

Dates were set to hear industries response to 900 Services and Cable television.

Motion was made, seconded and passed to adopt the minutes of January 28, meeting. Committee adjourned at approximately 1:15 P.M., until January 30.

GUEST LIST

COMMITTEE: House CCT Committee DATE: 1-29-92

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Don Low	KCC	
Mike Mlinar	KCC	
~~KCC~~ Karen Matson	KCC	
MIKE REECHT	TOPEKA	AT+T
Marc Shenell	1100 Walnut, KC, MO	ATT
Joyce Vernon	" "	AT+T
MIKE LURA	" "	AT&T
Virginia Starr	Topeka	AT&T
CC Metzler	Topeka	SWBT
Dave Nichols	Topeka	SWBT
Russ Phelps	Topeka	SWBT
Jim Young	Topeka	City Council
[illegible]	Topeka	United Tel.

CRS Issue Brief

Cable Television Rate Reregulation

Updated December 23, 1991

by
Angele A. Gilroy
Economics Division

Congressional Research Service • The Library of Congress

House CCT
Attachment 1
1-29-92

Cable Television Rate Reregulation

SUMMARY

Conflicting reports regarding the frequency and magnitude of cable rate increases, coupled with a rising number of customer service complaints, have prompted the examination of the cable television industry with particular emphasis on rate reregulation. A major focal point for this examination has been the 1984 Cable Communications Policy Act (P.L. 98-549) which contains the present Federal guidelines for cable industry regulation.

The debate over what, if any, action should be taken to address concerns regarding cable system rate and customer service complaints, as well as the alleged ability of cable system operators to thwart the development of competing video services, has generated significant controversy. Critics of the cable television industry continue to press for policy changes to address their complaints. Cable television industry supporters, however, feel that additional regulation is an unnecessary government intrusion which will only stifle the industry to the ultimate detriment of consumers.

Cable industry critics continue to press for changes and both the Congress and the FCC have taken active roles in the policy debate. A number of policy options are being examined as potential solutions to resolve these controversies and three major, but not mutually exclusive, policy approaches have been proposed: intervene directly to establish an across-the-board maximum rate for basic cable service; redefine the "effective competition" standard to greatly increase the number of cable television systems subject to rate regulation; and promote competition in an attempt to lessen cable television's alleged "monopoly status."

There appears to be significant congressional interest in pursuing a legislative solution to address alleged cable industry rate and service abuses. Congress, however, is not alone in its attempts to have an impact on cable industry policy, and recent regulatory and industry events, as well as the Administration's voiced opposition to the enactment of any cable reregulation measure, are likely to have an impact on the outcome of any final policy action.

ISSUE DEFINITION

Past Federal Communications Commission (FCC) interpretation of the Cable Communications Policy Act led to the 1987 deregulation of basic cable rates in approximately 97% of the Nation's cable television systems. The effect that this deregulation has had on the rate structure for basic cable rates has generated significant controversy, leading to both FCC and congressional reexamination of this issue. Recent (June 1991) FCC action has resulted in a significant increase in the number of cable systems being potentially subject to basic rate regulation. Whether additional revision of the Cable Act of 1984 is desirable and how, if undertaken, this should be accomplished continues to be a topic of significant policy debate.

BACKGROUND AND ANALYSIS

Cable television was originally developed in the late 1940s to bring conventional (over-the-air) broadcast television programming to remote areas which, because of distance or difficult terrain, were unable to receive programming on home antennas. Large community antennas were built to collect broadcast signals, and for a subscriber fee, a cable wire was brought into the home to feed in these signals. The retransmission of existing broadcast programming to unserved areas was the original purpose of cable television service.

Since its inception, however, the cable industry has expanded its offerings to include a wide variety of programming services, and as a consequence has expanded its audience to include urban and suburban areas as well. According to the National Cable Television Association (NCTA) there are over 9,600 cable systems with 55.6 million subscribers, generating $17.9 billion of revenues. Penetration levels, i.e., the percentage of television households subscribing to basic cable, have reached almost 60%.

Regulation of various aspects of the cable television industry has taken place at the Federal, State and local level. The regulation of subscriber rates, however, has historically occurred at the local and, to a lesser degree, the State level. Rate regulation has been largely confined to control over basic or entry level rates. The price structure for these rates was traditionally determined at the local level in conjunction with the terms and conditions established during the initial award and subsequent renewal of the cable franchise contract. Subscriber rates for premium services, e.g., pay cable services such as Home Box Office and Showtime and various pay-per-view events, have traditionally been unregulated. Passage in 1984, of the Cable Communications Policy Act (P.L. 98-549), dramatically altered the regulatory role of localities since as presently interpreted, the Act largely bars the regulation of basic cable rates for many of the Nation's cable subscribers.

The Cable Communications Policy Act and "Effective Competition"

In 1984, Congress passed the Cable Communications Policy Act (P.L. 98-549), a telecommunications measure which formulated a national regulatory policy for cable television. Section 623 of the Act determines the terms and conditions under which

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Federal or State regulators may subject cable rates to regulation. Included among these provisions is the requirement that the FCC formulate and implement regulations which ". . . authorize a franchising authority to regulate the rates for the provision of basic cable service in circumstances in which a cable system is not subject to effective competition." The FCC was directed to develop regulations which: "(A) define the circumstances in which a cable system is not subject to effective competition; and (B) establish standards for such rate regulation." A periodic review and possible amendment of such regulations to take account of technological developments was also ordered.

In compliance with these provisions, the FCC established criteria for determining when a cable system is subject to effective competition. The FCC, in 1985, determined that the availability of over-the-air broadcast signals would be the standard to be used in determining effective competition and that the availability of three unduplicated broadcast signals would meet the standard. It was estimated that based on the FCC's adopted three-signal standard, after a two-year transition period ending Dec. 29, 1986, few of the Nation's cable systems (an estimated 3%) would remain subject to regulation for basic cable service. Recent (June 1991) FCC action to strengthen this definition, however, will result in a significantly greater number of cable systems being eligible for basic rate regulation. Estimates of the impact of this action vary, ranging from cable systems serving from 34% to 18% of the subscriber base, being potentially subject to municipal rate regulation.

Since the deregulation of basic cable rates, various parties, including selected State and local municipalities and consumer groups, have voiced concern that the magnitude and frequency of cable rate increases have been unjustified. Cable industry supporters, however, claim that such increases are justified for a variety of reasons including costs associated with improved variety and quality of programming, system upgrades, increased copyright fees, as well as the reaction to the deregulation of what some considered artificially low rates. Regardless of the causes, a rising number of complaints regarding cable rate increases and the quality of cable service have provided the impetus for congressional review of the cable rate structure specifically, and the cable industry in general.

General Accounting Office Surveys

Conflicting reports regarding the severity and frequency of cable rate increases, as well as the difficulty in assessing the wide range of cable service offerings and service options, prompted Representative Markey to request that the General Accounting Office (GAO) provide information to assist the Telecommunications Subcommittee in evaluating the effects of cable rate deregulation. In response to this request, the GAO conducted three nationwide surveys of cable rates and services.

Initial Survey

In compliance with this request, the GAO on Aug. 3, 1989, released the results of its first survey in conjunction with cable industry hearings held by the House Telecommunications Subcommittee. Highlights of the major rate-related findings covering the period from Dec. 1, 1986 (just prior to deregulation) through Oct. 31, 1988 included the following: average monthly rates for the most popular service increased

by 26%, from an average of $11.70 to $14.77 per subscriber (an increase of 19% in constant dollars); the number of channels offered increased for the most popular basic service from an average of nearly 27 to about 32; rates for movie premium services i.e., the movie channels Home Box Office (HBO), Showtime, and Cinemax, decreased slightly (but by no more than 5%) both individually and in combination; monthly average cable system revenue generated per subscriber, a figure roughly equivalent to the subscriber's monthly cable bill, rose 14% -- from $21.58 to $24.68 during the same 23-month period (an 8% increase in constant dollars).

Reaction to the GAO study was mixed. Supporters of the cable industry felt that the results upheld their claim that most cable operators have been fair in dealing with subscribers and with the exception of a few operators, most rate increases since deregulation have been in the reasonable range. An increase in the number of basic channels and quality of cable programming was also cited in support of rate increases since deregulation. Cable critics, however, cited continued abuses which have occurred within their jurisdictions, and they questioned the accuracy of the results, given what they felt were various shortcomings with the response rate of the survey. Further concern was expressed over the finding that 28% of basic cable subscribers were subjected to a more than 40% rate increase over the two-year study period.

Followup Survey

House Telecommunications Subcommittee Chairman Markey, while commending the GAO for the report, requested a further report to update the data on rate trends and incorporate additional information on rate–related issues. One of the major purposes of this second GAO report, released in June 1990, was to update information gathered from the first survey, which had a cutoff date of Oct. 31, 1988.

Based on the data gathered in the initial and followup surveys, the GAO reached the following conclusions regarding cable industry trends in the three-year period (Nov. 30, 1986 through Dec. 31, 1989) since deregulation: monthly rates for the most popular basic service increased by 39% (an increase of 26% in constant dollars) from an average of $11.71 to $16.33 per subscriber; in contrast, average rates for premium services (e.g., HBO, Showtime) have decreased both individually and in combination; the number of channels for the most popular service increased, on average, from 27 to 34; and average revenue per subscriber increased 21% from $21.78 to $26.36 (a 9% increase in constant dollars).

Once again interpretations of the followup survey's findings varied depending on point of view. Cable critics cited significant rate increases coupled with the continued increase in cable subscriptions as evidence in support of the theory that cable is an unregulated monopoly in need of competition and/or reregulation. Cable industry supporters, such as the National Cable Television Association (NCTA), interpreted the survey results in a more favorable light. The NCTA noted that the GAO survey revealed that the rate of cable price increases has been slowing since the first year (1987) of deregulation, and that the average cable subscriber's monthly bill rose at approximately the rate of inflation during 1989. The NCTA also pointed out that the survey revealed a growth in the number of channels offered on basic service, as well as a decrease in the price of premium channels since deregulation.

Third Survey

Based on the data gathered in the third and two previous surveys the GAO in its third survey, released July 1991, reached the following conclusions regarding basic rates and services over the slightly more than 4 years (Nov. 30, 1986 through Apr. 1, 1991) since deregulation: monthly rates for the most popular basic service increased by 61% (an increase of 36.5% in constant dollars) from an average of $11.71 to $18.84 per subscriber; the number of channels increased by 8 (from 27 to 35) over the same time period; and average monthly revenue per subscriber increased from $21.78 to $28.76 over the 4 years (a 12 % increase in constant dollars.)

Results from the GAO surveys, as well as testimony submitted in numerous congressional hearings, convinced various Members of Congress that legislative action was necessary to address perceived cable industry abuses and approximately two dozen pieces of legislation were introduced by the close of the 101st Congress. Despite the failure to pass a final cable measure during the waning days of the 101st Congress, the commitment made by some to enact cable legislation has been carried over to the 102d Congress; advocates of a legislative remedy have introduced omnibus cable measures (S. 12, S. 211/H.R. 550, S. 432/H.R. 2439, and H.R. 1303) containing rate reregulation provisions. On June 28, the Senate Commerce Committee reported out an amended version of S. 12.

Policy Options

The debate over what if any action should be taken to address concerns regarding cable system rate and customer service complaints, as well as the alleged ability of cable system operators to thwart the development of competing video services, has generated significant controversy. Critics of the cable industry continue to press for policy changes to address these controversies and both Congress and the FCC have taken active roles in the policy debate.

A number of policy options, many of which are contained in past and pending legislative measures, are being put forth as a solution to resolve these controversies. Those who feel it is necessary to intervene in the cable marketplace are advocating three major, but not mutually exclusive, policy approaches:

1. Intervene directly to establish an across-the-board maximum basic cable rate;

2. Redefine the "effective competition" standard to greatly increase the number of cable systems subject to rate regulation; and

3. Promote competition in an attempt to lessen cable's alleged "monopoly status."

Establish a Maximum Rate

A number of supporters of cable rate reregulation have called for a policy of direct government intervention to establish a maximum rate for basic cable service and have urged Congress to amend the Cable Communications Policy Act to accomplish this. H.R. 1303, the Cable Television Consumer Protection and Competition Act of 1991, introduced Mar. 6, 1991, by Representative Markey, takes this approach to rate

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reregulation. H.R. 1303, an omnibus cable bill, contains among its provisions calls for the establishment of a maximum price for a basic service tier (i.e., retransmitted broadcast signals, public, education, and government channels[C-Span]) and intervention on behalf of subscribers subject to "unreasonable or abusive rate" increases for nonbasic services. (H.R. 1303 exempts from rate regulation programming offered on a "per channel or per program basis," e.g., pay services such as Home Box Office and Showtime as well as pay-per-view sporting and entertainment events.) This measure would abolish the effective competition test, established in the 1984 Cable Act, for determining which cable systems will be subject to rate regulation and replace it with an FCC-established across-the-board, flat, maximum price for the basic cable service offerings of all cable television systems. This approach, in effect, would establish a price cap for basic cable service in contrast to the other legislative measures introduced in the 102d Congress, which propose to extend rate reregulation by redefining effective competition standards.

Which Rates to Regulate. Entwined with the debate over whether to regulate is the question of what to regulate. That is, if a policy of rate reregulation is chosen, what level of cable programming and related services should be subject to reregulation? This issue has become more significant as cable systems increasingly have been retiering (i.e., repackaging) their programming, often towards offering a more limited, introductory service, at lower cost to subscribers. As the move towards retiering accelerates and varying terminologies are applied to a variety of programming tiers, it is necessary for policy makers to make clear what level of programming and if desired, related services, they wish to regulate. Present law (P.L. 98-549), calls for the regulation, in the absence of effective competition, of rates for the provision of basic cable service. The term basic cable service is defined as ". . . any service tier which includes the retransmission of local television broadcast signals." Therefore, when present regulation is enforced it is solely applied to that tier, or level of cable service, that contains retransmitted broadcast stations.

Cable initiatives introduced in the 102d Congress, however, seek, to varying degrees, to extend the jurisdiction of rate regulation authority to encompass not only additional programming services, but a wide range of charges associated with hook-up and installation, and changes in service levels. Such action is necessary, regulation advocates claim, to ensure that cable system operators will not attempt to shift costs to such services to increase revenue streams in light of regulated programming rates. Little is accomplished by regulating programming rates, advocates argue, if the costs associated with entering the system become unreasonable.

The impact of rate reregulation proposals can differ significantly depending on which rates one chooses to regulate, and any policy decision to reregulate rates is likely to include a debate over what obligation, if any, legislators and regulators have to the public to regulate the rates of additional programming, installation, and service related charges. Whether regulation of rates for other traditionally basic tier programming, such as CNN and ESPN, pay services such as HBO and the Disney Channel, as well as retiering and installation/equipment charges should be included in rate reregulation proposals will continue to be a subject for debate. Therefore, of equal significance to the question of whether to regulate is the question of what to regulate.

Rate Reregulation Pros and Cons. Supporters of direct government intervention to reregulate rates contend that such action is necessary given the present

cable industry environment. Cable operates as an "unregulated monopoly," advocates of rate reregulation claim, since there is no other single provider capable of delivering the variety of programming available to cable subscribers and direct competition within the industry through "overbuilds" is rare. The magnitude and frequency of cable rate increases since deregulation has been unjustified, they argue, and the passage of cable rate reregulation is the appropriate means of protecting consumers from unreasonable rates and restoring balance in the marketplace. Cable television, according to many reregulation advocates, is no longer viewed solely as an entertainment medium, but increasingly as a vital information source. If rate increases continue to go unchecked, they argue, many subscribers may be forced to give up cable service, resulting in a society divided into information "haves and have nots," based on ability to pay. While some, as a minimum, seek to subject basic service offerings of all cable systems to some form of price ceiling formula, others support a more selective approach by creating a more restrictive effective competition standard so rate regulation will be applied solely to those cable systems that could not withstand a more rigorous competition standard. At what level such regulation should take place, that is, Federal, State, or local, continues to be debated, but rate reregulation advocates are firm in their belief that some form of regulation at some level is more desirable than the present state of deregulation.

Those opposed to direct government intervention in the reregulation of rates fall into several camps. At the one extreme are those who feel that although there are some isolated cases of rate abuse, the industry as a whole has behaved responsibly since its *de facto* rate deregulation and therefore should not be subject to "unnecessary" government intervention. Most increases, they claim, are justified for a variety of reasons, and, absent a thorough examination of industry costs, can not be determined to be unreasonable. Many of the revenue gains, they argue, have been reinvested in the form of substantial improvements in the quality and variety of programming as well as plant and equipment upgrades, all to the benefit of subscribers. Rate reregulation, they claim, will only stifle the industry and foreclose further advances in programming and system upgrades. Furthermore, industry supporters believe that recent rates seem to be moderating and that a portion of these earlier increases can be attributed to a reaction to the deregulation of rates which had been kept artificially low as a result of earlier regulation. Others, while sympathetic to complaints about cited rate increases and service abuses, see rate reregulation as a temporary solution at best, which will not fully address the underlying causes for cited rate abuses. Such groups seek what they feel is a more lasting approach, through intervention in the marketplace to enhance the competitive position of alternative technologies that would lessen cable's "monopoly status."

Redefine Effective Competition

While still depending on regulation to curtail rate increases, the policy to redefine effective competition is perceived as a separate option distinct from rate reregulation, because of its more limited, market oriented approach. Unlike those who attempt to reregulate the rates of all cable systems, those endorsing a policy to redefine effective competition support the reregulation of cable rates solely under specific circumstances -- i.e., in those instances where effective competition is lacking. While the number of cable systems subject to rate regulation would vary, depending on the provisions contained in any newly adopted effective competition standard, it is generally perceived to be a less restrictive and intrusive policy option than an across-the-board reregulation

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of cable rates in all cable markets. That is, under an effective competition policy, rate regulation would not be applied in cable markets that met the newly adopted effective competition criteria, and would cease automatically in remaining markets, once it was proven that the cable system faced a market which met the defined standard of competition. While there is considerable support for such a policy, and it is assumed that any new definition would be more rigorous than present FCC criteria, what specific standards should be incorporated into any new definition continues to generate significant debate.

Congressional Initiatives. Several approaches to modifying the effective competition definition legislatively have emerged in the 102d Congress, with the introduction of a number of measures containing provisions that redefine and strengthen the standards needed to determine if a cable market is subject to effective competition. S. 12, the Cable Television Consumer Protection Act of 1991, contains provisions to reduce significantly the number of cable systems deemed to be subject to effective competition, and hence deregulated. Similarly S. 211, the Cable Consumer Protection Act of 1991, and its companion measure H.R. 550, and S. 432, the Cable Television Subscriber Protection Act of 1991, and its companion measure H.R. 2439, as well as H.R. 3560, also contain more rigorous effective competition tests than either the present or newly adopted FCC standard.

Under provisions contained in S. 12, a cable system shall be presumed to be subject to effective competition if it meets the following criteria:

1. Fewer than 30% of the households in the cable community subscribe to the cable service of such cable system; or

2. The cable community is served by a sufficient number of local television broadcast signals and by more than one multichannel video programming distributor. Such competing programming must be available at comparable rates to at least a majority of the households in the cable community and the number of households subscribing to such competing services must, in the aggregate, total at least 15% of the households in the cable community.

Provisions contained in S. 211/H.R. 550, as well as S. 432/H.R. 2439, and H.R. 3560, call for a more rigorous effective competition test. While the first criterion regarding a 30% threshold for cable subscribership is the same, provisions regarding the conditions relating to the competitive position of multichannel programming distributors are more extensive.

Although no estimates have been provided regarding the impact that the effective competition definitions contained in pending legislative measures would have on the cable television industry, all six (S. 12, H.R. 550, H.R. 3560, S. 432, H.R. 2439, and S. 211) propose a more rigorous standard than either the present or newly adopted FCC one. If the effective competition criteria contained in these legislative proposals were to be enacted, however, it is anticipated that a significantly greater number of cable systems would be subject to rate regulation than at present.

FCC Reexamination of Effective Competition. The FCC, on Dec. 13, 1990, reactivated an earlier proceeding to solicit comments on what, if any, changes were needed to its present three over-the-air broadcast signal definition of effective

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competition. The FCC concluded, based on the comments received from its initial inquiry, that its present three signal effective competition definition ". . . is no longer valid," and, after examination of comments received in response to a Further Notice of Proposed Rulemaking, adopted, on June 13, 1991, modifications to its present definition of effective competition.

The FCC adopted a multiple-option effective competition standard consisting of two alternative structural tests. (A previously proposed behavioral test was, after further examination, considered unworkable and eliminated.) More specifically, under the newly adopted definition a cable system would be presumed to face effective competition and therefore be exempt from basic rate regulation, if either of the following conditions are met:

1. Six unduplicated (but not necessarily the same) over-the-air broadcast television signals are available in the entire cable community; or

2. An independently owned, competing multichannel video delivery service (e.g., a wireless cable system, a second competitive cable system or overbuild, a home satellite dish service, or a direct broadcast satellite system) is available to at least 50% of the homes passed by the incumbent cable system and is subscribed to by at least 10% of the homes passed.

Estimates of how many cable systems would be eligible for municipal rate regulation under the new FCC effective competition standard vary. The National Cable Television Assoc. estimates that 61% of the 9,400 cable systems serving 34% of the Nation's 55 million cable homes have the potential to be regulated; the Commerce Department provided a more modest estimate, calculating that 52% of cable systems serving 18% percent of cable subscribers are potentially affected. Municipalities are not required to regulate the rates of those systems which do not meet the effective competition test, however, and the 5% automatic annual increase provided for in the 1984 Cable Act is still valid. The FCC also established guidelines for those municipalities which choose to exercise their right to regulate rates, including the cable system's right to a fair return on investment in addition to a reasonable profit.

Implementation of the FCC's rules, which were released on July 12, is scheduled to take effect Oct. 25, 1991. Congressional reaction to this new standard has been mixed. Some Members of Congress feel that no further legislative action should be undertaken until this recent FCC action can be implemented and its impact assessed. Various rate reregulation advocates, however, feel that the FCC's response is inadequate and continue to press for legislative action.

Promote Competition

A third policy approach to resolve cable system complaints focuses on measures to enhance the position of competing video providers, to lessen the alleged "monopoly status" of present cable system operators. Those who advocate such an approach feel that the presence of viable alternatives to the existing cable franchise will do much to resolve service and price complaints of subscribers, and will result in a more permanent, long term solution. Some support this approach on a stand-alone basis, and two measures (S. 1200 and H.R. 2546) which call for the deployment of a nationwide fiber optic telecommunications infrastructure also provide the ability and incentive to

telephone companies to compete with cable television systems in the provision of video services over such a network. Many, however, advocate this approach as an adjunct to other policies such as cable rate reregulation. (For example, S. 12, S. 211, H.R. 550, and H.R. 1303, in addition to extending rate reregulation through either a price cap or by redefining effective competition, also contain provisions to enhance the position of video competitors.)

Provisions contained in pending cable legislative measures attempt to promote competition through a number of means including: establishing program access, pricing, and distribution requirements; setting horizontal concentration and crossownership limits; and developing a wide range of additional pricing and behavioral restrictions.

Program Access, Pricing, and Distribution. A major complaint heard from those attempting to compete with cable system operators concerns inability to obtain access to programming, coupled with inability, when granted access, to obtain such programming under the same terms and conditions as cable system operators. Such a situation, competitors claim, is a major deterrent to the development of cable system competition since it results in a lack of programming and, when obtainable, programming set at an artificially high price. If other technologies are to become serious alternatives to cable system delivery, they state, competitors must be able not only to supply the programming that consumers want, but also to offer such programming on competitive terms and conditions. Program access and availability problems, competitors claim, are further aggravated by the growing move toward vertical integration between cable programmers and system operators. Such a relationship, they state, can lead to anticompetitive, discriminatory behavior, since such programmers have an incentive to: 1) favor their affiliated cable systems over competing multichannel video providers; and 2) favor affiliated programmers over independent programmers.

As a result of the above concerns, S. 12, S. 211, S. 431, H.R. 550, and H.R. 1303 contain provisions to establish program access, pricing, and distribution requirements for program distributors affiliated with cable system operators. These provisions attempt to ensure that vertically integrated video programmers (that is, a programmer which has some affiliation or relationship with a cable system operator) not only deal with various multichannel video competitors, but also offer their programming under the same terms, prices, and conditions as those offered to their affiliates. S. 12's lack of acknowledgement of exclusive contracts as a legitimate business practice is viewed by cable industry representatives as particularly objectionable since they feel that the right to enter into exclusive contracts for programming is available to all other entertainment industries and that most of the popular programming available to cable systems today was developed and financed by the cable industry.

Concerns that independent programmers -- those not affiliated with cable system operators -- also face discriminatory behavior that can lead to a lack of program diversity for subscribers have also been addressed. Provisions contained in various cable measures: prohibit a cable system operator from obtaining a financial interest in the programming as a condition of carriage; limit the number of cable channels any single cable programmer can occupy on a cable system; and prohibit a cable system operator from requiring exclusivity as a condition of carriage.

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Horizontal Concentration and Crossownership. Some bills (for example, S. 12 and S. 431) also attempt to promote competition by setting both horizontal concentration and crossownership limitations, thereby limiting market power. Present Federal law does not restrict the number of cable systems a company may own (horizontal concentration) and the industry presently includes a number of companies, termed multiple system operators or MSOs, that own more than one cable system. Concerns that one, or a few, companies could exert undue influence and market power over the industry if they gained control over large segments of the subscribership base has prompted inclusion of provisions to establish limits on the number of subscribers that any one cable company may serve.

S. 12 also contains provisions to restrict the degree of crossownership which can occur between cable system operators and other multi-video providers. Concerns have been voiced that cable system ownership of competing video technologies, particularly within their own franchise territory, could lead to the "warehousing" of potential competitors. That is, cable system operators could obtain the delivery rights to competing technologies, but never develop them since it could prove to be detrimental to their existing cable system subscriber base. Crossownership provisions contained in S. 12 attempt to ensure that cable systems cannot, through ownership, inhibit the development of potential competition. A cable system operator is prohibited from owning the potentially competitive microwave (MMDS) or satellite (SMATV) delivered programming services within its franchised service areas. (Existing relationships are grandfathered.) Once 10% of the Nation subscribes to direct broadcast service (DBS), another potential competitor, the FCC is directed to establish cable system/DBS crossownership restrictions for that service as well.

Additional Pricing and Behavioral Restrictions. A variety of additional provisions have also been incorporated into various pending cable measures in an attempt to enhance the competitive environment facing the industry. Included among these provisions are those which prohibit cable system operators from discriminating among current and potential subscribers regarding rates, terms, charges, and conditions within a cable community; clarify the ability of franchise authorities to deny renewal of, and award multiple franchise contracts within its jurisdiction; direct the FCC to establish maximum rates for leased access channels; require access to scrambled (encrypted) satellite video programming for private viewing by home satellite dish users; and establish must carry/retransmission rights, and channel positioning rules.

Retransmission Consent/Must Carry. Proposals to ensure the carriage of local broadcast signals by cable systems through the election of either a must carry or a retransmission consent option have generated major controversy. Under this proposal local broadcast stations have the option of choosing between: 1) retransmission consent, whereby they can negotiate with cable systems for compensation for their carriage; or 2) must carry carriage whereby a cable system is required to carry a qualifyiny local broadcast station, but no compensation is granted to the station; broadcast station election between retransmission rights and must carry status is required every 3 years. The retransmission consent/must carry option is contained in provisions added to S. 12 during commitee markup, and as a stand alone measure in H.R. 3380.

Broadcasters and others who support the imposition of retransmission consent, state that it is necessary to ensure the survival of "free" broadcasting and will help the

industry get on "... a more equal economic footing with cable." The cable industry, in opposition to retransmission fees, claims that it could cost consumers up to $3 billion in yearly cable television subscription costs without any new benefits, since under present regulations local broadcast signals are retransmitted by cable systems free of charge. Opponents of must carry also question the constitutionality of such rules, citing past court decisions which declared two versions of must carry rules unconstitutional. The possibilty of imposing some form of must carry requirements for cable system carriage of local broadcast stations is also being explored at the FCC. The FCC, in conjunction with its effective competition ruling, is seeking additional comment on whether must carry rules should be reinstated.

Outlook

There appears to be significant congressional interest in pursuing a legislative solution to address alleged cable industry rate and service abuses. Numerous bills (S. 12, S. 211, S. 431, S. 432, H.R. 550, H.R. 1303, H.R. 2439, H.R. 3380, and H.R. 3560) dealing with various cable issues have been introduced and S. 12 has been reported out of the Senate Commerce Committee. Congress is not alone in its attempts to address industry concerns, however, and recent regulatory and industry events, as well as the Administration's voiced opposition to the enactment of any cable reregulation measure, are likely to have an impact on the provisions contained in, and the likelihood for passage of, any cable rate reregulation measure.

How all these factors will eventually play out remains to be seen. There continues to be a rigorous commitment on behalf of a number of Members of Congress to enact legislation to alleviate voiced concerns over cable rate increases and service abuses. Whether a legislative solution will be embraced, however, as the most appropriate way to alleviate such concerns and, if so, what form such a measure will ultimately take, remains open to question.

LEGISLATION

H.R. 1303 (Markey)
Amends the Communications Act of 1934 to provide increased consumer protection and to promote increased competition in the cable television and related markets, and for other purposes. Introduced Mar. 6, 1991; referred to Committee on Energy and Commerce. Subcommittee on Telecommunications and Finance held hearings Mar. 20, June 18 and 27, 1991.

H.R. 3380 (Eckart)
Amends the Communications Act of 1934 to ensure carriage on cable television systems of local news and other programming, and restore the right of broadcasting stations to control distribution of their signals, and for other purposes. Introduced Sept. 24, 1991; referred to Committee on Energy and Commerce.

H.R. 3560 (Eckart)
Amends the Communications Act of 1934 to protect the cable consumer. Introduced Oct. 15, 1991; referred to Committee on Energy and Commerce.

S. 12 (Danforth)

Amends the Communications Act of 1934 to require cable franchise operators to carry certain local broadcast stations, including local educational programming. Authorizes cable television franchising authorities to regulate cable television rates. Sets forth distribution requirements for producers of video programming owned by or affiliated with cable television systems. Introduced Jan. 14, 1991; referred to Committee on Commerce. Subcommittee on Communications held hearings Mar. 14, 1991. Reported by Committee on Commerce, as amended, June 28, 1991 (S.Rept. 102-92).

S. 211 (Lieberman)/H.R. 550 (Shays)

Amends the Communications Act of 1934 to authorize States, when cable companies have no effective competition and upon certification by the FCC, and the FCC in areas not subject to State regulation, to ensure that rates for all cable services are reasonable. Prohibits cable operators from unreasonably discriminating among subscribers or potential subscribers of cable service in connection with the services offered or rates charged for such services. S. 211 introduced Jan. 15, 1991; referred to Committee on Commerce. H.R. 550 introduced Jan. 16, 1991; referred to Committee on Energy and Commerce.

S. 431 (Metzenbaum)

Amends the Clayton Act to prohibit any person engaged in the distribution of a cable programming service owned or controlled by any cable system from discriminating among cable or any other multichannel video programming distributors who purchase or license such programming for delivery to consumers. Prohibits any person from acquiring an interest in any cable television system where such person owns, controls, or is affiliated through common ownership with, cable television systems that are available to more than a specified percentage of U.S. cable subscribers. Introduced Feb. 20, 1991; referred to Committee on Judiciary.

S. 432 (Metzenbaum)/H.R. 2439 (Sanders)

Amends the Communications Act of 1934 to require the FCC to ensure that rates for the provision of basic cable service are reasonable. Specifies that if a cable system offers multiple tiers of cable service, the lowest-priced tier shall be the only service to which cable operators may require subscription as a condition of access to other program service tiers offered by the cable system. S. 432 introduced Feb. 20, 1991; referred to Committee on Commerce. H.R. 2439 introduced May 22, 1991; referred to Committee on Energy and Commerce.

FOR ADDITIONAL READING

Federal Communications Commission. Competition, rate reregulation and the Commission's policies relating to the provision of cable television service. M.M. Docket No. 89-600. Released July 31, 1990. 100 p. plus appendices.

U.S. General Accounting Office. Telecommunications: Follow-Up national survey of cable television rates and services. Report to the Chairman, Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, House of Representatives. RCED-90-199, June 13, 1990. Washington, 1990. 84 p.

HOUSE BILL No. 2958

AN ACT concerning the regulation, supervision and control of radio common carriers and radio communications by the state corporation commission; amending K.S.A. 1987 Supp. 66-104a, 66-1,143 and 66-1,145 and repealing the existing sections; also repealing K.S.A. 1987 Supp. 66-1,144.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1987 Supp. 66-104a is hereby amended to read as follows: 66-104a. (a) Except as otherwise provided in subsection (b), no telephone public utility shall be subject to the jurisdiction, regulation, supervision and control of the state corporation commission if it meets the following conditions: (1) The original cost of its telephone public utility facilities located in this state constitutes less than 1% of the total original cost of all its telephone public utility facilities located everywhere, (2) the telephone public utility does not have a central office in this state, (3) the telephone public utility is subject to the jurisdiction, regulation, supervision and control of a regulatory agency existing under the laws of any state bordering upon this state, (4) the telephone public utility certifies to the state corporation commission that a regulatory commission of a bordering state has asserted jurisdiction, regulation, supervision and control over its telephonic operations, and (5) customers of the telephone public utility in this state are charged the same rates and are provided service under the same terms and conditions as are its customers located in similar areas in a bordering state.

(b) The state corporation commission shall retain such jurisdiction and control over any such telephone public utility necessary to insure compliance with the condition that customers of the telephone public utility in this state are provided service under the same terms and conditions as are its customers located in similar areas of a bordering state and may, in its discretion, require any such utility to furnish copies of documents filed with the appropriate regulatory agency of the appropriate bordering state which demonstrate its compliance with such condition. Also, any such telephone public utility shall be subject to such orders on industry practices and quality of service as the state corporation commission may from time to time promulgate.

(c) The service of a telephone public utility, otherwise authorized to transact business pursuant to K.S.A. 66-131 and amendments thereto, relating to the provision of radio communication, including cellular radio, which is one-way, two-way or multiple, between mobile and base stations, between mobile and land stations, including land line telephones, between mobile stations or between land stations, shall not be subject to the jurisdiction, regulation, supervision and control of the state corporation commission ~~during the period commencing on January 1, 1986, and ending on July 1, 1988~~.

Sec. 2. K.S.A. 1987 Supp. 66-1,143 is hereby amended to read as follows: 66-1,143. (a) As used in this section and K.S.A. ~~66-1,144 and~~ 66-1,145 and amendments thereto, "radio common carrier" shall include all persons and associations of persons, whether incorporated or not, operating a public "for hire" radio service engaged in the business of providing a service of radio communication, including cellular radio, which is one-way, two-way or multiple, between mobile and base stations, between mobile and land stations, including land line telephones, between mobile stations or between land stations, but not engaged in the business of providing a public land line message telephone service or a public message telegraph service within this state.

(b) Except as provided in this subsection and K.S.A. ~~66-1,144 and~~ 66-1,145 and amendments thereto, no radio common carrier shall be subject to the jurisdiction, regulation, supervision and control of the state corporation commission ~~during the period commencing on January 1, 1986, and ending on July 1, 1988~~. The state corporation commission shall have the power and authority granted by K.S.A. 66-1,145 and amendments thereto and the power and authority to regulate and control radio common carriers whenever it is necessary to protect the public interest against cross-subsidization of competitive goods or services by monopoly goods and services.

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Sec. 3. K.S.A. 1987 Supp. 66-1,145 is hereby amended to read as follows: 66-1,145. Except as otherwise provided in this section, each radio common carrier may interconnect its common carrier radio telephone facilities with the telephone facilities of the telephone ~~company serving~~ *public utility certificated to serve* the *exchange* area in which the base station of the radio common carrier is located if an agreement can be reached between the radio common carrier and the ~~serving~~ telephone ~~company~~ *public utility* providing for such interconnection. When such an agreement cannot be reached between the radio common carrier and the ~~serving~~ telephone ~~company~~ *public utility,* the radio common carrier may petition the state corporation commission for the right of interconnection and if the commission finds that a necessity exists therefor such interconnection shall be ordered by the commission on such reasonable terms as shall be established and prescribed by the commission. ~~After June 30, 1988, each radio common carrier, which is interconnecting its common carrier radio telephone facilities with the telephone facilities of a telephone utility in accordance with an agreement or an order under this section, shall hold a certificate issued by the state corporation commission permitting the radio common carrier to transact the business of a radio common carrier in this state.~~

Sec. 4. K.S.A. 1987 Supp. 66-104a, 66-1,143, 66-1,144 and 66-1,145 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

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________________________ *Speaker of the House.*

________________________ *Chief Clerk of the House.*

Passed the SENATE ________________________

________________________ *President of the Senate.*

________________________ *Secretary of the Senate.*

APPROVED ________________________

________________________ *Governor.*

TWO-WAY INTERACTIVE VIDEO
Fact Sheet/Narrative

Thank you for this opportunity to discuss the involvement of the Kansas Corporation Commission in 2-way interactive video applications. My name is Karen Matson. I am Managing Communications Analyst and have been with the Commission since 1985.

Since the middle of July, 1989, the Kansas Commission has been reviewing agreements between telephone companies and educational systems for the provision of 2-way interactive video for the classroom.

Because the telephone companies use the same types of facilities to deliver local and long distance telephone traffic as 2-way interactive video, the Commission has jurisdiction and asks that the filing of all applicable rates and contracts for the facilities be brought before the Commission for consideration.

However, if the system does not involve telephone facilities, the Commission is not involved. So the Commission may have some authority in how the facilities are provided, it does not regulate the actual provision of interactive video.

House CCT
Attachment 3
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The Commission, in approving the interactive video contracts for facilities, has been very lenient in regards to the costing used to support rates. The rates filed by the independent companies have been based upon very long periods of depreciation for the facilities, incremental costing, and in some cases, the rates are based on what the school could afford to pay, which may not be the entire cost of the project. These costing tools all serve to reduce an estimated cost.

The Commission reasoned that the potential for economic development and enhancement of the educational curriculum, particularly in rural areas, warranted this departure from traditional regulatory costing guidelines. The Commission termed the approved rates "economic development" rates and noted they would be considered and designed according to the unique characteristics of each individual case.

At this time, none of the telephone companies' rates approved for this service have negatively affected local service rates. That is to say, there have not been any rate cases in which any part of the cost of these interactive video systems have been picked up by the general body of reatepayers. Should any of these involved companies come in for a rate

case and ask to recover part of these costs from the ratepayer, the Commission could consider, on a case by case basis, the overall benefits to the community in allocating the costs to the communities.

This is easier for some companies than for others. Some independent companies serve only rural areas, and perhaps even a very small rural area. Maybe they are member-owned cooperatives. The total "payback" to that community in terms of economic development and educational enrichment may balance out the overall costs that may need to be spread to that same community in local rates. Subsidization would not be a major issue since those generally benefiting through interactive video would be those paying for it in telephone rates.

Other telephone companies, such as Southwestern Bell, have a marked urban / rural split within its general body of ratepayers. There is more potential for one customer class to subsidize another in this situation. In these cases, it is more difficult to balance the interests.

The Commission is aware that not all the process has gone as smooth as everyone would like. Providing 2-way interactive video to a school cluster, as you are aware, often times involves several telephone and perhaps even non-telephone companies, such as cable TV companies.

Coordinating the bids, determining the best and least cost mix of technology, and getting affordable uniform rates are major tasks.

We are aware there is often disparities in bids for the facilities to serve these systems. At this time, we have not formally investigated interactive video pricing, although our staff has been involved informally in some of these discussions in an attempt to reach a satisfactory resolution. A general investigation by the Commission may be necessary and we are following closely those other states, such as Michigan, that have formal investigations getting underway.

The Commission will also be considering intraLATA competition in the future. While we would not propose to do away with the LATAs (which are the area code) in Kansas, the investigation will look at letting other providers such as AT&T, MCI, Sprint, and KINI, to compete with SWBT and each other. This will be of great interest to 2-way interactive video supporters. Should competition be authorized, their options for providers of facilities to link the clusters may greatly increase. And logically, the more bidders for the service, the more the prices should go down.

This concludes my summary. If you have any questions, I am more than happy to address them. Thank you for you time.