

Approved 3-23-92
Date

MINUTES OF THE House COMMITTEE ON Computers, Communications & Technology

The meeting was called to order by George Dean
Chairperson

12:00 Noon on March 2, 1992 in room 529-S of the Capitol

All members were present except: Representative McKechnie - Absent
Representative Kline - Absent
Representative Patrick - Absent
Representative Rock - Excused

Committee staff present:

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

Conferees appearing before the committee:

Representative Darrel Webb
Jim DeHoff - Kansas AFL-CIO
Ralph Skoog - KTACB Association
Rob Marshall - Executive Director,
Mid-America Cable TV Association

Others attending: See attached list.

Rep. Darrel Webb appeared before the committee and testified in favor of H.B. 3089, Cable Television Service. He stated CATV was deregulated in 1984, effective in 1986. Since that time, the rates have increased ten percent above the inflation rate. On June 14, 1990, testimony from the U.S. General Accounting Office before the sub-committee on Telecommunications and Finance and committee on Energy and Commerce show a study done by Housing and Development regarding changes in cable rates from December 1986 to October 1988. This study showed a twenty-nine percent average increase in cable subscribers monthly rates for the lowest price basic service. A key concern, was whether cable rates would show any moderation in the future year. They found that basic rates have continued to increase rather significantly.

During 1989, cable subscribers monthly rates, for both the lowest price and the most popular basic service, increased on the average of ten percent higher than the rate of inflation.

Jim DeHoff appeared before the committee testifying in support of the bill (attachment 1).

Ralph Skoog appeared before the committee testifying in opposition of the above bill (attachment 2).

Chairman Dean asked Mr. Skoog to elaborate on what he termed a "natural public utility". Mr. Skoog explained electric/gas are considered to be public utilities--something that is necessary. He also added, in other states it has been determined by that definition, cable television is not a public utility. Discussion followed regarding what constitutes "effective competition" as outlined in the above attachment 2.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Computers, Communication & Technology,
room 529-S, Statehouse, at 12 Noon ~~xxx/pm/xx~~ March 2, 1992

Mr. Rob Marshall, Director appeared before the committee and explained the map portion of attachment 2. He said it was drawn based upon research generally reflected in signal contour maps available from compilations done by TV Digest. The level of signals are predicted Grade B contours as filed with the FCC. Grade B is allowed to be counted as one of the six unduplicated, over-the-air signals for purposes of meeting criteria for effective competition.

Chairman Dean announced the second bill for discussion today, H.B. 3089 Acquisition for Data Processing, would be heard on Wednesday, March 4, 1992. Meeting adjourned until Tuesday, March 3, 1992.

GUEST LIST

COMMITTEE: House CCT

DATE: 3-2-92

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Maura Trout	1611 Ks Ave	IBM -
JIM CANTRELL	900 JACKSON	:K D H. R.
Wayne Thomas	900 Jackson	KDHR
Dick Imolation	120 SE 10th AVE	KS BE
Dave Larson	Capitol	Legislature
RALPH SKOOS	Topeka	KCATV Assn
FRED LAWVER	Topeka	Brd of Ag.
M. J. BURNS	Topeka	Brd of Ag.
CAREY BROWN	LSOB	DISC
JIM PARKER	LSOB	DISC
JIM GREEN	Forbes Field, Bldg 740	KDHE, ocs
Jon McKenzie		KCC
JEFF LEWIS	Topeka	KDOC
Russ Shawgo	Topeka	IBM
Cheryl Weber	Topeka	SRS
WARREN NEUDORFF	TOPEKA	DISC
Jean Turner	TOPEKA	DISC
Gene James	"	DISC
Mary Shivers	Topeka	KDOT
KEAVIS GIBBS	TOPEKA	UNISYS DOUGLAS CABLE Comm
Karen Matson	Topeka	KCC
Don Low	Topeka	KCC
Rob Marshall	Lawrence	Mid-American Cable TV Assn.

**Testimony Presented to the
House Committee on Computers, Communications and Technology
on House Bill 3098**

Mr. Chairman and Members of the Committee:

My name is Jim DeHoff and I represent the Kansas AFL-CIO. I am here today to testify in support of House Bill 3089. Cable television has become a powerful industry. What started out as an "antenna service" for rural residents beyond the reach of broadcast TV signals has emerged as a giant communications concern. A majority of Americans -- more than 52 million households -- now boast basic cable service. Cable television is well on its way to becoming as widespread and as "necessary" as air conditioning. The necessity for cable tv service will only continue to grow in the future of high technology and mass communications which we can foresee.

While the industry has grown by such leaps and bounds, so have the rates to subscribers. According to a General Accounting Office study last year, rates for basic cable service (mostly retransmissions of local broadcasts, community-access channels and satellite-transmitted national networks such as CNN) jumped an average of 29 percent from December, 1986, through October, 1988. In some cities, basic rates skyrocketed far beyond the average. At the same time, subscribers complain about fuzzy reception, frequent interruptions, long repair delays, unreasonable repair fees and slipshod billing.

We believe that an industry that has become such a necessity in people's day to day lives, needs to be regulated in order to guarantee protection for the consumer. If local cable companies are going to enjoy a monopoly on services, then it does not make sense to allow them to charge anything the market will bear.

Thank you for the opportunity to testify today. We respectfully urge you to recommend HB 3089 favorable for passage.

*CCT
Attachment 1
3-2-92*

TESTIMONY OF KANSAS CABLE TELEVISION ASSOCIATION
TO
KANSAS HOUSE OF REPRESENTATIVES COMMITTEE ON
COMPUTERS COMMUNICATION AND TECHNOLOGY

IN RE: HOUSE BILL 3089
MONDAY, MARCH 2, 1992 AT 12:00 NOON

Chairman Dean and members of the committee, the Cable Television Association is pleased to have this opportunity to appear on behalf of the industry in reference to House bill 3089.

As we understand it, House Bill 3089 proposes to designate the Cable Television service industry as a public utility subject to regulations pursuant to Chapter 66 of Kansas Statutes Annotated.

The industry opposes the Bill and particularly in its present form for the following reasons:

1. Cable Television service is not a natural public utility. Since the first State Supreme Court so determined in 1951, the Courts have uniformly so held.

2. The 1984 Cable Act in §621(c), 47 U.S.C. §541(c), a Federal statute, does preclude regulation of Cable Television as a common carrier or public utility.

3. Kansas law specifically authorizes regulation of ^bcable television services and rates and charges for such services in K.S.A. 12-2006 through 12-2014 by cities (copy of existing statute passed in 1972 is attached).

4. The 1984 Federal Cable Act provides for Federal Regulation of a number of activities relating to cable

CCT
Attachment 2
3-2-92

television services in addition to precluding the treatment of such companies as public utilities.

- a. It recognizes and specifically provides guidelines for franchises;
 - b. It specifically provides and authorizes franchise fees and provides limits thereon subject only to a specific exceptions provided in the Federal Act;
 - c. It authorizes regulation of "basic cable service" rates in areas ^{not} subject to "effective competition" in the event that the franchise so provides and the franchising authority wishes to exercise the authority. Any increase in "basic cable" subscriber rates in excess of 5% per year is subject to regulation in those systems subject to rate regulation;
 - d. A substantial part of the State of Kansas qualifies under the 1991 "effective competition rules", (FCC Report and Order MM Docket #90-4 which became effective October 25, 1991.) A summary of the new rate regulation rules is attached;
 - e. A map is attached generally showing those parts of the State of Kansas which are subject to "effective competition" and therefore rate regulation is precluded by Federal law;
5. In the event that the Committee is concerned that cable systems do not pay their fair share of government in Kansas, attention is drawn to the fact that the commercial

real estate owned by cable television companies is subject to real estate taxes at the commercial rate; that cable systems pay personal property tax on their plant and equipment on the same basis as you pay on automobiles; that most franchises provide for the maximum amount of Federal franchise fees which is 5% of the gross business and in addition cable systems collect sales tax upon their services for both State and Local Government.

6. The changes in cable television rates in the last few years have been reasonable and in spite of a spiralling consumer price index as documentation previously provided has indicated that in general the charges per channel charged to cable customers has generally decreased in the last few years. Some additional information with reference to cable rates in Kansas is shown on the attached sheet.

7. The industry believes that State regulation would add cost to the services they provide to Kansas citizens and that eventually these costs would be incurred by Kansas citizens as additional expense.

A number of knowledgeable operators of cable television systems in Kansas are present and we would be pleased to take your questions. Thank you for the opportunity to appear.

Ralph E. Skoog
Legislative Counsel

icated easements and other public places, and reasonable grounds for forfeiture of franchise rights.

History: L. 1972, ch. 49, § 1; March 24.

Law Review and Bar Journal References:

"State Control of Local Government in Kansas: Special Legislation and Home Rule," Barkley Clark, 20 K.L.R. 631, 667 (1972).

"Pay Television: The Pendulum Swings Towards De-regulation," 18 W.L.J. 86, 95 (1978).

CASE ANNOTATIONS

1. Mentioned in holding that the furnishing of cable television service requires reasonable regulation by cities. *Community Antenna TV of Wichita v. City of Wichita*, 209 K. 191, 194, 495 P.2d 939.

2. Act construed with 12-2001 et seq.; city had authority to regulate rates of cable television company. *City of Liberal v. Teleprompter Cable Service, Inc.*, 218 K. 289, 291, 292, 544 P.2d 330.

12-2007. Franchises; installation; term. It shall be unlawful for any person, firm or corporation acting in its own behalf or under a lease with or pole contract from any public utility to construct, install, operate or maintain a cable television service in, on, over, under, upon, across, from and along the streets, alleys, sidewalks, public property and public ways within the corporate limits of any city without first obtaining, from such city involved, a franchise authorizing the same under such reasonable conditions as the circumstances may require; and the governing bodies of such cities are hereby authorized to grant or extend one or more such franchises for a term of not to exceed twenty (20) years from the date of such grant or extension; and no person, firm or corporation shall ever be granted an exclusive franchise. No franchise shall be granted or extended unless a public hearing shall be held following at least one week's notice in the official city newspaper.

History: L. 1972, ch. 49, § 2; March 24.

CASE ANNOTATIONS

1. Applied with 12-2001 et seq.; city had authority to regulate rates of cable television company. *City of Liberal v. Teleprompter Cable Service, Inc.*, 218 K. 289, 291, 544 P.2d 330.

12-2008. Rates to subscribers. Every applicant for a franchise shall, upon request of the city, file with the city a schedule of its proposed rates and charges for its proposed services. Such rates and charges may be established as maximum rates for such services by the original franchise and if so established may not be exceeded without the approval of the governing body of the city.

History: L. 1972, ch. 49, § 3; March 24.

CASE ANNOTATIONS

1. Applied with 12-2001 et seq.; city had authority to regulate rates of cable television company. *City of Liberal v. Teleprompter Cable Service, Inc.*, 218 K. 289, 292, 293, 544 P.2d 330.

12-2009. Cables and equipment; map required to be filed. Cities may by ordinance require the filing with the city by the person, firm or corporation providing cable television service of a proper map showing and describing the exact location of all of its facilities within the city streets, alleys and public ways including underground cables and equipment.

History: L. 1972, ch. 49, § 4; March 24.

12-2010. Compensation and levies by cities. Cities, may, by ordinance, levy a franchise fee or tax, including annual fixed charges as may be prescribed in the franchise ordinance. Such fixed charge may consist of a percentage of the gross receipts derived from the service permitted by the franchise from consumers or recipients of such service located within the corporate boundaries of such city. Such levies, taxes or fees including all forms of consideration to such city and including initial lump sum payments must be reasonable and shall be generally in conformance with standards, if any, established by federal communications commission regulations or other applicable laws.

History: L. 1972, ch. 49, § 5; March 24.

12-2011. Franchise; violations of act; penalty. In the event of violation of any city franchise provision, or the provisions of this act, by any duly franchised person or entity furnishing cable television service, the municipality having granted such franchise, before taking any action to declare a forfeiture, shall serve written notice of such violation upon the franchise holder with directions to correct such violation or show cause why such violation should not be corrected at a public hearing held not less than thirty (30) days from the date of service of such written notice. Continued violation of any city franchise provision of this act may be enjoined by the district court. Any person, firm or corporation acting in its own behalf or under a lease with or pole contract from any public utility which attempts to or does construct, install, operate or maintain a cable television service in, on, over, under, upon, across, from or along the streets, alleys, sidewalks, public property and public ways within the corporate limits of any city without possessing a valid franchise from such city in-

involved as authorized by this act shall be guilty of a class C misdemeanor. Each day such act continues shall constitute a separate offense.

History: L. 1972, ch. 49, § 6; March 24.

12-2012. Existing systems and services. All ordinances and existing franchises purporting to authorize persons or entities to provide cable television service in said cities shall hereinafter be deemed to be authorized and operative under the provisions of this act.

History: L. 1972, ch. 49, § 7; March 24.

CASE ANNOTATIONS

1. Statute is validating act authorizing the providing of cable television service within city; regulation of rates upheld. *City of Liberal v. Teleprompter Cable Service, Inc.*, 218 K. 289, 292, 293, 544 P.2d 330.

2. Applied with 12-2001 et seq.; city had authority to regulate rates of cable television company. *City of Liberal v. Teleprompter Cable Service, Inc.*, 218 K. 289, 292, 293, 544 P.2d 330.

12-2013. Act does not apply to public utilities. Nothing in this act shall apply to public utilities, including utilities regulated by the state corporation commission.

History: L. 1972, ch. 49, § 8; March 24.

12-2014. Severability. If any clause, paragraph, subsection or section of this act shall be held invalid, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid clause, paragraph, subsection or section.

History: L. 1972, ch. 49, § 9; March 24.

FEDERAL "EFFECTIVE COMPETITION" RULES - OCT 25, 1991

FCC RELEASES NEW RATE REGULATION RULES

The Federal Communications Commission (FCC) released its "effective competition" Report and Order (MM Docket No. 90-4) July 12, 1991, modifying its rules and standards for the regulation of basic cable service rates. The new rules become effective October 25, 1991. A Second Further Notice of Proposed Rulemaking (MM Docket No. 84-1296) was issued requesting further comment on whether the lack of must carry signal carriage requirements for cable systems undermines the effective competition standard. Comments are due by September 25, 1991 and reply comments by October 25, 1991.

Under the new rules, effective competition exists, and franchising authorities do not have authority to regulate basic service rates if:

1. Six, unduplicated, over-the-air broadcast television signals are available in the entire cable community. Such signals include unduplicated full service commercial stations, full service noncommercial stations, satellite stations, low power television stations and television translator stations. Unduplicated means a signal which does not simultaneously duplicate more than 50 percent of another signal's weekly prime time schedule (between 5 and 10 p.m. central time). Available would be determined by Grade B signal contours and significantly viewed status within the community. To be significantly viewed a network affiliate must have a viewership share of at least 3 percent and a net weekly circulation of at least 25 percent for non-cable households. Independent stations must have at least a 2 per-

cent share and at least a 5 percent weekly circulation. Translators and low-power stations are considered available to the extent of their predicted protected contours.

2. An independently owned, competing multichannel video delivery service is available to 50 percent of the homes passed by the incumbent cable system and is subscribed to by at least 10 percent of the homes passed by the alternative system within the incumbent cable system's service area. Independently owned will be defined according to the FCC's existing cable television cross-ownership rules (Section 76.501). Video delivery systems that may be counted include: a competing cable system; multichannel, multipoint distribution systems (MMDS); satellite master antenna television systems (SMATVs); home satellite dishes (HSDs); and direct broadcast satellite services (DBS). Parties may also submit information through the waiver process about other video delivery systems that should be counted for the multichannel competitor standard.

The franchise authority is delegated the responsibility for the initial determination of whether effective competition exists in a community. Where franchise authorities are permitted to regulate rates and elect to do so, the timing of any determination with respect to effective competition is within their control. They need not quickly assert rate control and do not lose their right to do so through time. Any party wishing to establish the presence or absence of effective competition may petition the FCC in accordance with the special relief

provisions of Section 76.7. Where disputes arise, the presumption in an FCC proceeding will be that effective competition does not exist, with the burden on the cable operator to show otherwise. Each party will bear its own expenses regardless of outcome.

Where changes in market conditions cause a cable system to no longer face effective competition, the franchise authority may regulate basic rates after a 60 day period. Where a previously regulated system becomes subject to effective competition, rate regulation must cease immediately. During appeals of determinations regarding the regulatory status of systems, the status quo prior to the determination must be maintained. Unregulated cable systems will be free to alter their basic cable service rates during such periods, but would have to rebate any increases, including interest, where the Commission subsequently affirms that they do not face effective competition.

The Commission lacks the authority to roll back basic service rates that were increased by a system that faced effective competition under the rules existing at the time of the increase. With respect to retiering, Section 625 of the Cable Act explicitly and narrowly proscribes the Commission's and franchising authorities' ability to interfere in decisions by cable companies regarding unregulated tiers of service, which would include all tiers prior to institution of regulation. Cable operators, even when subject to rate regulation, may freely move services between tiers unless the franchise agreement requires that such service be carried on a rate regulated basic tier.

After the Cable Act's automatic five percent annual increase [Section 623(e)] is taken into account, the FCC will rely on the franchise authority to set rates for basic service where effective competition does not exist and the franchising authority has rate regulation jurisdiction pursuant to the franchise or otherwise. For

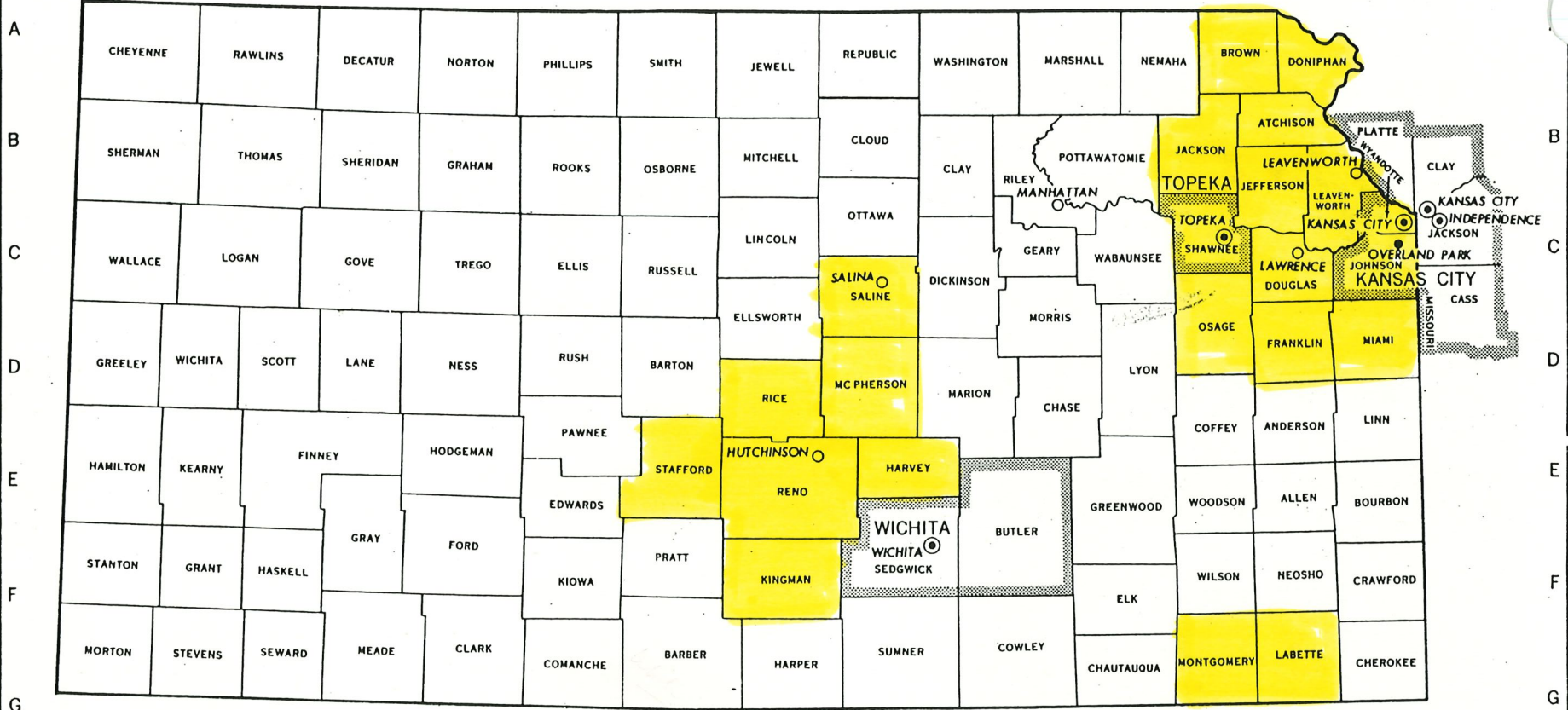
purposes of regulating the rates for the provision of basic cable service in circumstances in which a cable system is not subject to effective competition, basic service is any service tier which includes retransmission of any local broadcast television signals, or, where there are not at least three local signals, any unaltered broadcast television signals with the exception of superstations or satellite delivered television signals. (see footnote 85, Report and Order, MM Docket No. 84-1296, April 11, 1985) . Basic service includes recurring monthly charges for basic service tiers, the cost to provide the equipment necessary to receive the service and the charge for original or downgrade installation to obtain basic service. It does not include expanded tiers, pay channels and installation and equipment needed to receive such non-basic services. If a tier does not include local broadcast signals, even though a subscriber must buy through a tier containing local broadcast signals, the tier without local broadcast signals is not subject to local regulation.

In considering basic rate increase requests, franchise authorities must take into account reasonable profits, capital, basic cable programming, customer service, labor and ancillary costs attributable to obtaining and transmitting signals carried on the basic tier, as well as changes in such costs and the cost of any requirements made by the franchise authority that do not relate directly to provision of cable service. The Commission has created a rebuttable presumption evidentiary standard that requires franchise authorities to presume the reasonableness of such documented costs. Under the standard, local rate regulators would retain the discretion to deny proposed rate increases, even if they fell within the presumption, but would be required to provide substantial written evidence supporting any decision to deny recovery of bona fide, documented increases in such itemized costs of providing basic cable service. Local ratemaking

disputes would be directly appealable to state courts.

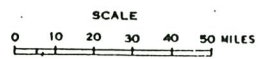
The Commission recommends that state legislatures consider enacting laws authorizing state public utility commissions to be franchising authorities empowered to regulate basic service rates for the cable systems in their states.

Franchise authorities choosing to regulate rates are required to give formal notice to the public; provide an opportunity for interested parties to comment; and to make a formal, written statement including disclosure of the relevant factors considered, the basis for the final determination and a summary explanation when a decision is made. In accordance with Section 643(d) of the Cable Act, any rate increase request upon which the franchising authority does not act within 180 days after receipt (unless extended by mutual agreement), is deemed granted.



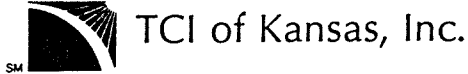
LEGEND

- ⊙ Places of 100,000 or more inhabitants
- Places of 50,000 to 100,000 inhabitants
- Places of 25,000 to 50,000 inhabitants outside SMSA's



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	<u>Homes Passed By Cable</u>	<u>Homes Subscribing To Cable</u>	<u>Penetration</u>
1991	218,420	160,402	75.6%
1990	213,955	149,526	69.8%
1989	216,417	149,665	69.1%
1988	107,140	71,226	66.5%
1987	105,450	68,917	65.4%

These figures are composite totals for cable television systems operated by TCI of Kansas. As you can see, from December of 1987 until December of 1991, TCI of Kansas grew dramatically in terms of sheer size as represented by the number of homes passed by cable and homes actually subscribing to cable services. The third column is the most telling. In 1987, 65.4% of those who could subscribe to cable service did. In 1992, that figure grew to 75.6% actual. Consumer behavior would seem to indicate that basic cable service is a better value today than in 1987.

TCI of Kansas currently delivers cable television service to 70 Kansas communities ranging in size from Willowbrook just west of Hutchinson to as large as Topeka. While I do not have detailed figures to report from other cable operators, informal research indicates that the trends noted above are not atypical.