

The City Club Gadfly

SEPTEMBER, 1983



gadfly, n. . . . 2. a purposely annoying or provoking person, esp. one that stimulates to activity and to the analysis and defense of ideas by persistent criticism of an irritating, pointed kind.

Vol. 6, No. 1

CABLE TV: WHAT THE CITY LOST

by Sidney W. Dean, Jr., and Eric Schmuckler

A revised version of the following article appeared on the Op-Ed page of The New York Times on August 29. Because The Gadfly feels that the omitted material, largely addressing the role of the borough presidents in the selection process, is crucial to an understanding of the situation, we reprint the piece here in its entirety.

Cable communications make possible breakthroughs to new and higher levels of information, entertainment and business development. The cable TV franchise contracts now signed by the city fail to realize these benefits. Over the 15-year life of these ten franchises, New York's people, businesses, and even government will be shackled to the monopoly powers yielded to system operators by the city.

Cable systems provide the only video transmission facilities generally available to the public in their exclusive territories. Cable operators leverage their control over transmission highways to monopolize profitable programs and content, excluding other program suppliers. Discrimination against independent suppliers of content violates public rights of fair competition and free speech.

As the world's largest free marketplace for information, news, ideas, the arts, and business transactions, New York will look to these cable systems for economic, cultural, and civic growth until the turn of the century. It is important now to ask: What has the city lost? How did it happen?

What can be done about it?

Half of the city's families will be economically cut off from cable. The poor, disadvantaged, unemployed, homebound, and elderly are electronically redlined by these contracts.

A so-called "universal tier" of eight channels at \$2 per month has so little value it seems designed to fail. None of the local broadcast TV stations is included and up to five of the eight channels may carry no video signal at all. Down payments are structured to discourage low-income families.

An "extraordinary circumstances" exemption permits cable operators to avoid or delay wiring neighborhoods not deemed "economically viable." Precisely these areas have the greatest needs for public communications services.

The city cannot employ cable efficiently to deliver essential public services if low-income groups are largely unconnected. Cable communications are economical for delivery of many municipal services: preventive health care is easily brought to children, the elderly and homebound; specialized instructional programs supplement education and job-training; and so on with social counseling, aid to the handicapped, public safety, and energy conservation. The poor and disadvantaged are denied equal opportunity to acquire information skills by these contracts, which aggravates existing social

(continued on Page 7)

inequities.

The technical capabilities of these systems will be inferior to those already operating in other cities. Two-way "interactive" facilities are not required at system start-up; cable operators can postpone them indefinitely, as has been done in Manhattan. The contracts lack a mid-term review mechanism whereby the city may demand upgrading the system to accommodate new uses and increased demand.

Independent suppliers of content cannot compete fairly with programs and services in which cable operators have a stake. Third parties lack the right to lease channel time on non-discriminatory terms; the contracts allow cable operators to "negotiate" all rates of lease access. There is no oversight of these negotiations, however, no right of public appeal, and no criteria of fair competition.

Business and independent users of cable are held captive to the priorities, timetables, and predatory terms of cable operators. Practically all important and profitable business uses of cable require two-way and pay-cable facilities, from which all leased access users are restricted. Such services include information and text, consumer financial transactions, computer links, and shopping-at-home. Publishers, banks, retailers, and entrepreneurs developing these services are forced to choose between sharing equity rights with cable operators or losing access.

The performing and creative arts cannot lease access on pay-cable to develop funding. Cultural entrepreneurs of specialized but intense audience interests need freedom to innovate and the potential of profits. With pay-channels under operator control, the creative arts will again be dominated by mass programming constraints.

Cable operator control of content obstructs the two-way free flow of information which makes democracy possible. The public is free to choose only from among options preselected by cable operators. Low-income groups lacking cable connections will be further alienated politically by their preclusion from the medium's capacity for face-to-face participation in civic and community affairs.

Citywide responsibilities have been abdicated to borough halls. With anticipated capital investments of a billion dollars and annual revenues of half a billion, cable TV offers the largest borough patronage opportunities in recent city history. The haste of the borough presidents to act on public impatience and to open patronage flood-gates are at the core of the city's lost benefits.

The boroughs relentlessly opposed citywide communications planning and oversight. Borough machines drew cable district boundaries and the borough presidents personally announced their selection of "targeted" applicants *eighteen months* before public services and rates were negotiated.

Undermined by pressure from borough halls and understaffed and underfunded for communications planning and development, city negotiators could not hold to

the guidelines adopted by the Board of Estimate in December 1981. As the Deputy Borough President of Staten Island charged, negotiations since 1981 have been a series of continuous concessions from city objectives to cable operator demands.

The city signed a contract with many key sections as yet unpublished. As citizens waited in the Board of Estimate chambers to testify, the city was still hurriedly negotiating critical concessions. To harness cable and other technologies for public benefit, it is obvious that government restructuring is needed . . . now.

Recovery of these losses is unlikely and could take years of legal struggle. The New York State Commission on Cable Television must approve the franchises; it has modified Manhattan cable actions in the past. Procedural grounds for partial denial include the contracts' downgrading of the 1979 Request for Proposals, which rejects terms "less than" the 1970 Manhattan contracts. The 1983 cable franchises lack workable controls over monopolization as well as gravely discriminate against leased access and business users.

Federal or state anti-trust agencies or the courts possibly may hold that cable operators' vertical integration of transmission and content constitutes "undue concentration." Such anti-competitive restraints of trade in communications services may require legal definition and enforcement of rights of access.

So far, the city has disclosed no plans for ongoing regulation and development of cable nor has it established a citizen's advisory and oversight board. The City Club and other civic groups have advocated that legal standing be conferred on cable users to petition courts for contract enforcement; enabling state legislation (the Bruno-Ferris bill) has been introduced.

Twelve years of inept oversight of cable in Manhattan have proved the need for constant vigilance by both the city and the public to prevent operator abuses. The city's failure to understand and employ cable communications has mismanaged resources as vital to the public as transportation, energy, and the environment. ■

Sidney Dean is a trustee of the City Club of New York, and chairman of its Cable TV Committee.

Eric Schmuckler has been a freelance writer on the subject of communications.