

For Release

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STATEMENT TO THE BOARD OF ESTIMATE IN FAVOR OF AUTHORIZING CABLE TELEVISION  
OPERATORS TO ORIGINATE PROGRAMS

THE CITY CLUB OF NEW YORK  
by Sidney W. Dean, Jr., Trustee and  
Chairman, Communications and  
Utilities Committee

6 West 48 Street  
New York, New York

NEW YORK CIVIL LIBERTIES UNION  
joins in and supports the principles  
of this statement, and has authorized  
it to be presented by Sidney W. Dean, Jr.,  
who is a member of the Committee on  
Communications Media of the national  
American Civil Liberties Union.

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The City Club of New York, joined by the New York Civil Liberties Union, recommends that the Board of Estimate authorize and direct cable television CATV franchisees to make all channel capacity not required for distribution of metropolitan television and radio stations available for the greatest possible diversity of programs, media, and services including municipal, educational, public non-profit, and commercial. We condition this recommendation on full and effective regulation to protect First Amendment freedoms of press and expression, free and fair competition between suppliers of programs and communications content, and compliance with the FCC Fairness Doctrine. We furthermore recommend that the City require franchisees to make individual cable coverage of the City's natural community districts separately available on reasonable terms.

The Club conditioned its support on six requirements, some of which were novel to the public conceptions about television services.

First, the Club stated that the cable companies should be prohibited from producing or owning programs but, instead, merely procure and distribute them. The City should carefully note the decision of the United States Supreme Court that required separation of motion picture production from theater distribution, and which abolished common ownership and control of production and distribution.

Such a policy would make available up to six cable channels for new types of programs and services, some of which could be made available for the City as well as supplied by producers of entertainment, sports, educational and cultural programming.

The Club also urged the City to require that the cable companies offer separate coverage for each of the communities in the City, following the new community planning districts under the City Charter. This would provide a wholly new television service for community news, public activities, and elections for the City Council, State Assembly and Senate, as well as U. S. Congress.

The Club pointed out that these high-capacity cables can also carry printed media, banking and credit to homes and business, retail shopping direct from homes, use of central libraries of film, tape and books.

In fact, the Club predicted that over half of the homes in New York will be on cable in ten years, and that people will soon receive almost all of their present television, radio, print media, and first-class mail over such systems.

The Club would prohibit granting cable franchises to media or editorial organizations including newspapers, magazines, TV or radio stations or networks. This would prevent, said the Club, undue influence and unfair competition among all potential sources of news, entertainment, and other services.

The Club wants the City to treat the cable companies exactly like public utilities, such as the telephone and telegraph companies, who must offer services to everyone on equal terms, under regulated rates and conditions.

It is unthinkable, the Club asserted, that the decision as to who can use this cable system, for what purposes, and at what rates, be controlled by the cable company any more than the post office or telephone company can control/or profit unduly from mail and <sup>the contents</sup> telephone services.

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Premises of Statement

This analysis and recommendation is founded on the common knowledge of the communications industries of the future of cable television and other services. It is predicted that over 50 per cent of the population of the U.S. will be connected by cable within ten years, as well as over 75 per cent of the families and businesses in New York City. The cables which carry television signals have a real capacity of up to 36 channels and can also transmit facsimile, high speed printing and reproduction, data processing, as well as "piggy-back" conventional telephone, telegraph, watchman, etc., services. Cable systems can also be converted for two-way communications. The cable system, therefore, will soon deliver home-printed newspapers and books, two-way educational instruction, banking and credit services, at-home retail shopping, live references to every major library of books, film, and recordings in the U.S., etc. The ultimate system will be a full, two-way

dial-controlled service exactly analagous to the present telephone system. All of the technology is now available, as well as assurances of adequate public revenues to make such a system both highly profitable and indispensable to a free, pluralistic society.

At the time the three original experimental franchises were granted in December 1965, the carriage of other than local television stations was not anticipated. Since then, the Federal Communications Commission and practically all municipal and local franchising bodies have authorized such originations on surplus channels. The F.C.C. mandates that all CATV systems carry all television stations serving the local area.

The following statement of principles does not deal directly with various real as well as spurious issues which have been introduced into these proceedings. "Pay Television" is expressly forbidden by the original franchises and no exceptions are asked for. No "additional charges" to the public are sought, as they are also prohibited by the establishment of a \$5 per month maximum subscription fee in the franchises, which is now the going rate. The carriage of advertising commercials is not dealt with, as the F.C.C. has prohibited the inclusion of paid advertising in originated programs.

#### Essential Conditions of City Approval

To protect freedoms of expression and the press, to assure free and fair competition in news, information, and programs, and to safeguard all aspects of the public interest, the City must make certain absolute conditions for the granting of this authorization and establish permanent guidelines for all new or renewed cable franchises. These minimum conditions are:

1. That surplus channels be provided to any and all producers and distributors of public communications programs, media and services including newspapers, magazines, and print media, at reasonable, uniform and regulated terms of access, usage, and compensation.
2. That cable franchisees be prohibited from the carriage of programs and sources which they, or commonly owned or controlled affiliates, either produce, own, or control. The record in broadcasting, motion pictures, and print media demonstrates that free and fair expression and competition in communications will be circumvented when carriers, exhibitors, and distributors engage in production, or where communications producers control carrier, exhibition, and distribution systems.

On these grounds the City must prohibit the issuance or renewal of cable franchises to those who directly or indirectly own, control or have beneficial interests in sources of programming, media, or services (including newspapers, magazines, publishers, advertising interests, stations and networks, or suppliers of equipment, facilities and services purchased for cable systems.)

Separation of communications content from the control of communications carriers is indispensable to free expression, press freedoms, and fair competition among the sources of news, entertainment, and other communications services. This principle was established by the U. S. Supreme Court when it separated the ownership and control of the production and theatrical distribution of motion pictures. On-air broadcasting is the single exception to this principle, but the semi-official organ of the industry, the magazine "Broadcasting," had this to say in an editorial in its July 15, 1968 issue:

"...The ambitious venturers in cable television think of some day owning systems containing 20 channels or more of distributive capacity--and controlling all the intelligence that passes through those many paths of access to American homes...as though tomorrow's cable operator would combine the functions (and the ownerships) of the Bell System, the television networks, the independent television stations, the motion picture theaters and who knows what other enterprises.

"It won't wash.

"If indeed the cable system of the future is to contain a multichannel capacity far in excess of that needed to relay broadcast signals that subscribers cannot easily take off the air, it will be an entirely different system from the kind for which regulatory principles are now being decided.... As a starter, the regulators might find it helpful to think of cable television as a common carrier, a distribution system available to those who have something to distribute. In such a concept it would be logical to decide "that no one could monopolize both the carrier and its contents."

3. That all members of the public within the franchised area have equal and selective access to all categories of services carried.
4. In recognition that the City confers a monopoly on the supply of all such services to the franchisee, it is mandatory that terms and rates of carrier services to the public and to communicators be directly regulated by the City, subject to Federal and State standards, in the interest of fair and reasonable terms to the public as well as to the franchisee on the necessary, productive, net capital invested. Such regulation would be analagous to that now applied to the telephone and public utility services. In the event of sale of all or part of a franchisee's interests, the City should have the option to purchase it at appraised fair market value.
5. That where the content of the program or service affects public policy, controversial issues and institutions, or electoral contests, that franchisees comply with the Federal Communications Act as interpreted by the F.C.C. and the Courts to require balanced and fair treatment, equal time for candidates, and notification and opportunity of reply to personal attacks.

6. That franchisees make carrier distribution separately and reasonably available in each of the natural community areas within their total territory in general conformity with the boundaries of the community planning districts now established under the City Charter.

#### Summary

The absolute requirement by the City that surplus cable channels be utilized will bring to the public new and diversified sources of information, entertainment, education, and enlightenment, without increases in mandatory costs to the public and subscribers. Such a cable communications policy will bring novel and valuable services, rather than just "more of the same" types of programs on broadcast stations which are wholly financed by, and therefore subservient to, the mass merchandising requirements of advertisers. We are certain that the provision that franchisees make "community editions" available will foster citizen self-expression and participation in community and government activities at a time when it is demanded by the needs and opportunities of our metropolis.

Furthermore, we see great advantages for the self-government and revenues of New York City. The City can properly pre-empt, at fair charges or franchise trade-offs, one or more channels for such public needs as safety services, education, and community activities. With additional subscription revenues from the appeal of these additional services, we can anticipate greater franchise revenue as well as eventual lowering of minimum rates to the public.

Finally, we affirm that the City of New York has the affirmative obligation to bring about such a city-wide system, at the earliest possible date. Its unique values to good citizenship from a better informed, better educated, actively participating public justifies City financial assistance, such as debt guarantees and even direct investment if necessary. Compared with the massive public investments by Federal, State and City governments in the distribution of goods and people by highways, mass transportation, and water, comparable assistance from those governments to the distribution of information, news, and knowledge is in the highest public interest.