

AMERICAN CIVIL LIBERTIES UNION  
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IMPLEMENTING OPEN ACCESS TO CABLE TELEVISION

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Sidney W. Dean, Jr. is a long-time member of the ACLU's Communications Media Committee and was Chairman of the Cable Television Subcommittee when the Union's basic policies were presented to the FCC in 1971. He has been a corporate marketing executive and a professional specialist in the communications media. Since communities are in various stages of pre-, pending, and post-franchising development, his comments are directed toward those areas of citizen participation most likely to advance ACLU's open access ("common carrier") objectives.

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## IMPLEMENTING OPEN ACCESS TO CABLE TELEVISION

An almost ignored civil liberty which has evolved from communications technologies is the right of every person to unimpeded speech, assembly, petition, and publishing in the communications carriers -- namely the postal, telephone, and telegraph systems -- which operate on a monopoly basis.

Each began as a private carrier. Each was compelled to become a public "common carrier" after the public realized that carrier control over content inevitably suppressed and exploited economic, civic, and human rights.

After 55 years, radio and television broadcasting persist as private, closed access monopoly carriers. The rationale of "shortage of channels" has successfully diverted public attention from the central defect of carrier control of material broadcast to the American public.

Cable television, as part of the broadband carrier technologies, today has all of the technical capabilities to develop as an open access system. ACLU's basic policy positions and guidelines, which encourage development of cable television as a means of furthering debate and expression, make this valid assumption. Further, ACLU asserts that the public benefits derived from an open telecommunications system justify government funding if private equity and loan capital should be inadequate.

The achievement of the goal of open access to cable television by common carrier principles will be measured by the availability of cable channels for leased use, by anyone, at reasonable and non-discriminatory terms. (See "ACLU Guidelines for Advancing Civil Liberties Objective Governing Regulation of Cable Television (CATV) Systems," attached.)

This practical requisite for open access to cable is not embodied in legislation nor tested in the courts -- leased channels are authorized by the FCC for post-1972 systems, but not in terms that are enforceable in the 6000 communities now served by 3100 operating systems. The 12 states which have taken some jurisdiction over cable franchising do not require access by common carrier principles (with the possible exception of Connecticut which has classified cable television as a public utility).

Today, therefore, the fight for open access must be waged in the 16,000 U.S. communities which are potential franchisers of cable television. Most of the 6000 communities already franchised may have negotiable opportunities to add or convert common carrier channels. Another 3000 communities are in various stages of franchise negotiation.

The purpose of this memorandum is to identify the dozen or so principal areas of cable policy and cable services where the goal of open access may best be advanced. The examples have been selected from the writer's personal experiences in New York City, the largest and possibly most complex cable market, as well as from observations and reports from other cities.

Characteristics of the Cable Market. By standards of advertising media and broadcast audience values, the cable television market has many limitations and risk elements for independent channel leasees:

- there are now 3100 franchised systems covering 6000 communities.
- the total of 8 million subscribers (homes) represents 12% of U.S. population, largely in smaller towns and cities.
- only 100 systems have 10,000 or more subscribers.
- the largest single system (San Diego) has 75,000 subscribers. Manhattan (N.Y.) has 130,000 subscribers in two interconnected franchise territories.
- the average system has 2500 subscribers.
- there are practically no system interconnections between cable systems for live networking; film and tape costs are high for small systems.
- so few systems now lease channels that there are no syndicate distribution organizations.
- 89% of all systems are commonly owned by other media interests (35% broadcasters; 20% program producers; 17% newspapers and other publishers.)
- pay-cable is still under test in about 50 systems with a total of 50,000 subscribers.
- the average penetration of homes by cable is 45-50%, which is at a disadvantage with television broadcasting and metropolitan newspapers.

Attitudes of Cable Operators. Until the shape of FCC regulation and citizen groups militancy became clear in 1970-1973, cable entrepreneurs and investors assumed that their control over programs and content could be as, or nearly, absolute as television broadcasters. Cable's promises of growth, power, and profits were premised on the assumption that cable systems would be the sole suppliers of such glamour potentials as pay-TV, sports, shopping services, burglar alarms, and meter reading. These premises were embodied in private investments, SEC prospectuses, and waves of mergers/acquisitions. The possibility that cable operators would not have FCC or legislative permission to use and control more than one of their own channels for their own purposes, at their own timing, still appears a lethal threat to their proprietary rights and entrepreneurial expectations.

Cable operators' resistance to leased channels takes many forms. Since compliance with the FCC's 1972 rules will not be required of pre-1972 systems until 1977, many operators use all of their channel capacity for on-air television signals.

Post-1972 systems and older systems with unused channel capacity can delay and obstruct leasing them to independent producers. They may simply not publicize the availability of channel time; they may not quote firm rates and terms for fixed periods; they may choose not to lease or offer studio facilities. They may not offer interconnections with other cable systems lest they lose their unused channels to powerful outside program producers.

Independent cable television producers and channel leasees can be quickly chilled by uncommunicative and uncooperative cable operators. To justify major investments in either advertiser-supported or pay-cable, they must have assurance of future audience availabilities and rates. They cannot risk testing their program concepts on cable and then learn that cable operators go into competition with them. Broadcast networks, chains, and other on-air producers are loathe to take the risk of programming for cable, even in other markets, for fear of reprisals by their affiliates and other customers to whom local cable is a threat.

Necessity for Broad-Based Public Involvement. The necessarily long-range goal for assuring open access to cable leased channels by 1977 -- the year for FCC compliance by all systems -- will be best served by public awareness of the benefits of cable access and representation from all segments of the community.

Even in pre-franchising stages, a citizens' committee can start the process of identifying community interests in open communications, and planning local legislative and public support. Experience to date shows that the most active and effective members of initial committees are those seeking a voice normally denied them in broadcasting and metropolitan dailies; educators, clergy, blacks and ethnic minorities, creative producers and writers, political progressives, are typical early joiners.

Fortunately, in practically every community, there are leaders in education who readily grasp the importance of open access. They are usually among those who already use, or know the capabilities of audio-video media, and among administrators who see cable as a distribution system for instruction to the home-bound, the handicapped, the poor, and vocational trainees.

Experience to date with municipal and state government agencies has been frustrating and negative. Cable distribution has clear benefits for the distribution of information concerning social services, health services, public safety, etc. When two-way services become available (or use present telephones as a return circuit) these benefits would be multiplied. A combination of inertia, threat to present job categories and chronic financial shortages have retarded development in government.

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Public involvement has been successfully focused on the organization of large (25-50 members) "citizens advisory councils" who work with legislators and public officials in drafting initial franchises, ordinances, and requests for bids by potential operators.

Flowing from citizen involvement in the early stages, most larger cities are attaching a permanent "Advisory Committee" or "Public Access Board" to the local legislative or supervisory authority.