

THE REGULATION OF CABLE TELEVISION
IN THE STATE OF NEW YORK

AMERICANS FOR DEMOCRATIC ACTION
New York State Chapter

Resolution

January 6, 1972

ADOPTED

- A. Principles of Regulation
- B. Procedures for Franchising
- C. Regulation and Taxation

ADA agrees with the judgment of authorities that broad-band cable and microwave systems will soon become the universal carriers of news, entertainment, education, as well as business, institutional, and government services. On-air television will survive as a secondary medium.

The technical and economic means are now available for these systems to provide two-way services for education, shopping, banking, library access and direct user payments. They will and must be flexibly designed for neighborhood, community, legislative and administrative district circuits. They will be interconnected and networked city-wide, regionally, nationally, and even globally. Systems now being installed provide 40 or more television channels; others incorporate telephone-dial selection and switching through central exchanges.

Each cable system is a monopoly in its franchised area. As communications carriers, they provide essential services both to public subscribers and to all producers and distributors of programs and content services. They are now authorized to lease channel capacity and facilities (such as two-way, pay-TV, etc.) to the general public.

Cable carrier systems, therefore, are essential carrier systems for the citizens, institutions, and governmental agencies of New York State. Since they will shape our lives, our occupations, our industries and ability to govern ourselves. Their structure and regulation must therefore be governed by the First Amendment, as well as by anti-trust and business practice regulations which demand open and fair competition through all channels of distribution.

According to the December 1970 Report to the State of N.Y. Public Service Commission by Commissioner Jones, there were 138 operating cable systems in the State with 300,000 subscribers out of a total of 865,000 TV homes in their franchised areas. Additionally, 63 non-operational systems had been franchised, and 251 franchise applications were pending in other communities.

In July 1971, the State Legislature properly ordered municipalities and other civil divisions to cease granting additional franchises for a period of a year pending State study.

It was clear that these franchise rights to communications carrier services, potentially as valuable or more valuable than telephone franchises, were being awarded by uninformed and corruptible local governments without understanding of their importance or the need to assure the full benefits of these carriers to their citizens. Elementary planning, competitive bidding, and awards procedures were ignored or violated. Criteria for awards were dominated by short-term revenue considerations rather than quality and modernity of services, public access rights, and fair rates to subscribers and independent program distributors.

These considerations led the 1971 Convention of National ADA to adopt policies for the electronic media and carrier systems to safeguard the public interest. The national statement is attached to this resolution, and its principles are incorporated in this resolution.

The New York State Chapter of ADA calls on the Legislature of the State of New York, and solicits the leadership of Governor Rockefeller, to adopt the following basic policies for the structure and regulation of broad-band cable (CATV) systems in the State of New York:

1. Cable TV and broad-band carrier systems are public utilities, and must be regulated accordingly:
 - a. Their monopoly status shall be legalized
 - b. Services must be provided to all subscribers and to all channel lessees promptly, without geographic or demographic or economic discrimination
 - c. Rates and terms to both subscribers and lessees of facilities shall be just, reasonable, and non-discriminatory. They shall take into consideration fair market levels of interest on loan capital and reasonable profits on equity capital adequate to secure original and growth capital in the open market.
 - d. They shall continuously provide, on reasonable notice, new, improved, and more economical services and facilities as they become commercially available.
 - e. Carriers shall be prohibited from engaging in program and content services which would constitute unfair and preemptive competition with all other independent services.
 - f. Carriers shall be prohibited from purchasing, leasing, or using equipment from suppliers in which they have financial interests.
 - g. Carriers may provide terminal facilities and equipment for optional leasing by subscribers and producers (receivers, printers, computer access terminals, cameras, studio facilities, etc.), without discriminating against independent terminal equipment and service suppliers.
2. All capacity and facilities not employed to relay on-air television and radio stations shall be regulated by common carrier principles, which call for:
 - a. Providing total capacity reasonably in excess of demand
 - b. Treating customers on a first-come, first-served basis when capacity and facilities may be in temporary short supply.

3. All homes and non-profit establishments in the franchised area to be provided with a cable outlet at no installation or subscription charge for the carriage of all public and non-profit programs and services, only. Other services, including the relay of commercial television stations, would be subject to standard subscription rates.
4. Whenever capacity or facilities are in short supply, allocations shall be subject to the policy directives of a State review body which shall provide that:
 - a. FCC "Fairness Doctrine", Section 315, and rights of reply to personal attack shall be enforced
 - b. Balances in program and content services (news, entertainment, education, business, government, etc.) shall fairly reflect both majority and minority interests.
5. Circuits shall be established by neighborhood, community, legislative, administrative and economic districts, retail shopping areas, etc. Carriers must provide convenient interconnections with all other public electronic carrier systems.
6. Cable systems should have no responsibility or liability for programs and content originated by others. Originators, lessees, or performers are now legally liable for content under State and Federal laws. Therefore, cable systems should be prohibited from requiring pre-viewing, recording, or censoring programs in any way.
7. Construction of the system must proceed with due speed and not discriminate by socio-economic areas, or otherwise. Construction substantially behind schedule should be penalized or be grounds for franchise termination except when beyond the system's control.
8. State and local governments must procure reasonable rights-of-way, pole and duct rights and easements through public areas, private properties and buildings without undue delay or costs to the system.
9. Program directory services must be provided by the cable systems so that subscribers have complete and current information on the availability of programs. These may be printed bulletins for public distribution, newspaper listings, and displays on television channels.
10. Opportunities for employment and advancement should be open to all without discrimination, based on merit. Provisions should be made for training on the job as well as in coordination with community educational institutions.
11. Preferential procurement of supplies and services must be forbidden; the franchising authority must have access to all records and bidding procedures.

B. Procedures for Franchising

Franchising Procedures should be mandated by the State on its civil divisions. The following procedures should be minimum standards:

Before bids or proposals for operation of a cable system are entertained, the local government should first draw up a Plan for its short-and long-term uses of broad-band communications. (This would be equivalent to the requirement of "ascertainment of local needs" imposed by the FCC on those seeking TV or radio broadcasting licenses. The Plan should include, as a minimum, such considerations as these:

- a. The areas and communities to be served. This includes both the overall area and the local neighborhoods and sub-districts which require local circuits.
- b. The local community needs and interests. This includes geographic and demographic classification and coverage of the community; types of content (news, public affairs, education, health, business, government, etc.); ~~interconnections~~ between communities.
- c. Local community communications resources from which programs and communications services can originate, for example, (schools, local media, museums, businesses, government, .
- d. The potential sources of revenue. These include: subscriptions; optional direct public payments for specific programming and specific services (burglar and fire alarms, etc.); payments for leased channels; regular commercial advertising; other institutional sponsorship (Red Cross, private schools, etc.); specific government services (public education, health, welfare, civic, etc.)
- e. The basic technical requisites, such as the number of channels to be made available with minimum two-way provisions for at least yes or no response and instructions from subscriber to system.
- f. The appropriate structure of systems, including ownership and control, with safeguards for the public interest.
- g. The appropriate financing of systems, such as equity, loans, and public and government participation.
- h. The requisites of legislative and regulatory agencies' involvement.
- i. The criteria for award of franchises should be assurances of advanced, quality, economical facilities and services and low rates both to subscribers and lessees of facilities.
- j. The appropriate local legislative and regulatory measures to be adopted after due notice and public hearings. These measures should provide for effective continuing supervision, handling of complaints, and research projects for developing the system's services to the public.
- k. The Plan should be reviewed at public hearings before bids are requested. After bids are received, they should be available for public inspection.
- l. The regulations should apply to all systems that will be licensed and to all operating systems, after five years.

C. Regulation and Taxation

12. ADA recommends that State legislation establish the above principles as a minimum for mandatory application to the franchising and regulation of broad-band cable communications by the State, or any civil division of the State.
13. ADA proposes that the State tax cable systems only that amount sufficient to support a fully qualified and competent regulatory branch of the Public Service Commission with its own research, economic, legal, technical, commercial, and operational resources. We point out that the revenues generated by cable carrier systems such as subscription fees, channel leasing fees, subscriber payments for services, shopping and banking transactions will become very large; each is taxable under present sales, income, and other tax provisions. The great benefits to the public from these new systems should not be jeopardized or obstructed by premature taxation for revenue.
14. ADA opposes the imposition on cable carriers of obligations to provide free or no-charge capacity or facilities to government, educational, or non-profit organizations. We regard this as discriminating against other public users, a concealed tax on other users, an invitation to wasteful use of resources, and potentially repressive of First Amendment rights to access. ADA points out the net costs of carriage services, exclusive of production and terminal functions, average lower than one dollar (\$1.00) per hour per thousand families.