

NATIONAL CABLE POLICY: A TRAVESTY

The cable television industry is waging a three-pronged attack to escape local regulation -- in Congress, the courts, and the Federal Communications Commission -- with unexpected success in each. Before Congress adjourned for the elections both houses adopted a last minute triply-amended "Cable Franchise Policy and Communications Act of 1984" (HR4103) which the President will undoubtedly sign. The act is the first basic guideline for an electronic medium enacted by Congress in fifty years.

In fact, the legislation is an industry wish-list, not a coherent national policy. The goal of cable system owners prevailed: to control every program and service they carry.

The bill results from four years of stop-and-start negotiations between cable system operators and city officials, who regulate most cable systems by granting franchises. The compromise will phase out rate regulation, remove standards for minimum programming, and make franchise renewal nearly automatic. Cable consumers and program producers were largely unrepresented. City officials protected their own turf -- revenues and franchising powers. No one at the table represented the First Amendment or the producers of programs and content services.

Thus, free speech and free trade were not real issues. The undebated assumption was that cable operators will control all the information carried on their systems. Legitimizing this monopoly control is their highest legislative priority.

Yet operators of cable systems are not journalists, information sources or entertainers. They merely lease and deliver other people's programs and services to homes and, increasingly, to businesses. Cable can carry every type of electronic information, but operators will continue to select the information supply. Although they claim to be "electronic publishers," their chief exercise of free speech lies in packaging and pricing the speech of others.

The deregulatory bill and the F.C.C.'s complaisance turn the First Amendment on its head by giving owners of the hardware near-absolute legal control of the speech they carry. It is analogous to giving telephone companies power to decide who may use the phone and what they can say.

Cable operators leverage their gatekeeper power in monopolistic ways. For example, Home Box Office is available on the Manhattan Cable System (both owned by Time Inc.) but HBO's competitors like Showtime and Bravo cannot gain access to the system despite consumer demand. There is no constitutional or economic basis for allowing cable operators to reject information from any source willing to pay for transmission at a fair price.

The answer to monopoly control of cable speech and marketing is a policy of leased access. Cable system operators would be obliged to transmit any program or service that pays for transmission at published rates. Telephone systems under like common carrier policies have led the world in services, revenues and profits.

Although free speech is of paramount public concern, the bill before Congress is a travesty of national policy in every basic way. There are no requirements for..

- ..regional and national connection between systems .
so producers can choose their markets and audiences
can enjoy the widest array of choices.
- ..universal low-rate services for the poor, disadvantaged,
and homebound"
- ..no mandate to bring service to poor neighborhoods
- ..in an exploding technology, no requirements to adopt
technical advances that would expand services or lower
rates.
- ..no enforceable rights of independent producers and suppliers
of content to lease channel-time and facilities on non-
discriminatory terms.

With cable the growth medium of our generation, this deregulation law is a disaster. Short term judicial remedies to the bill's restrictions on free speech and free trade are highly unlikely. Perhaps the industry's opportunism in demanding further concessions, which almost scuttled the bill at the last minute, will open Congressional eyes and lead to a coherent national policy for cable TV based on the First Amendment and antitrust protections.

The more certain probability is that the telephone industry, now converting to fiber optic transmission with broadband/video capability, will eventually secure regulatory consent to provide common carrier television transmission.