

The Cable TV Law Hurts the Public

By Eric Schmuckler
and Sidney W. Dean Jr.

President Reagan, late last month, signed the Cable Franchise Policy and Communications Act of 1984, an industry wish list in which Congress has given cable system owners a free hand to control every program and service they carry. Rather than establish a coherent national policy on cable television access, Congress succumbed to heavy lobbying by cable operators. The public, as usual, will be the loser.

The issue of access to cable systems for producers and programmers seems arcane and academic. Most people, confused by the multiplicity of cable channels, can't understand why anyone would be worried about access. After all, it often seems as if anyone with two chairs and a microphone can get on cable.

The power to decide what shows will be carried is great and easily abused. For example, Time Inc. owns both the Manhattan Cable system (which delivers cable service to Manhattan south of 79th Street) and Home Box Office (a national movie and entertainment channel). Neither Showtime nor Bravo, two of H.B.O.'s strongest competitors, can gain access to Manhattan Cable despite strong demand for their services.

There is no logical reason why cable operators, who control the hardware, should also control the content of the programs carried on their systems. This is like allowing telephone companies to decide who may use the phone and what they may say. Yet, this is exactly what the new act permits. And by 1987, cable operators will be allowed to set rates for virtually all services and channels. Now, those rates are set through negotiations with local government officials.

Local officials will also lose the power to demand that certain services, such as all-news or all-sports channels, be included in the basic package for which consumers pay a monthly fee. The act will make franchise renewal nearly automatic, placing on cities the burden of proof that service is inadequate.

The act does require systems with more than 36 "activated" channels to open up 10 percent of their channels to independent producers and programmers. While this provision sounds good, a long list of conditions make it worthless in practice.

Because they are local monopolies, cable systems should be treated as

public utilities that merely lease programs and services and deliver these to homes and, increasingly, to businesses. The leasing fees should be set by a public commission and should be nondiscriminatory — that is, they should be the same for all users and should be as low as possible, to encourage the widest access. Cable operators should be obliged to transmit any program or service that pays for transmission at the approved rates. No one — neither government officials nor cable operators — should have the power to select cable programming.

Do cable systems have enough channels to provide access to all producers and programmers? To some extent, the supply of programming would be limited by simple economics, since even nondiscriminatory rates would restrict access. With current technology, operators could put 70 channels on a single, standard cable wire. That's more than enough to meet current demand. If it wasn't, a system using fiber-optic cable, the next technological step, could transmit a virtually unlimited number of channels.

The act is a travesty of national policy in every basic way. It fails to require regional or national connections between cable systems, so that producers can choose specific markets and audiences can enjoy the widest variety of choices. It makes no requirement of universal, low-rate service for the poor, disadvantaged and homebound; no mandate even to bring service to poor neighborhoods. In a fast-growing technology, there are no requirements to adopt technical advances that would expand services or lower prices.

With cable the growth medium of our generation, this deregulatory law is a disaster. 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 fair and coherent national policy. □

Eric Schmuckler writes frequently on the cable industry. Sidney W. Dean Jr. served on the advisory committee of New York City's Office of Telecommunications from 1970 to 1978.

Why should operators be allowed to control the content of programs?

Treat the systems as utilities

