THE CABINET COMMITTEE REPORT TO THE PRESIDENT ON CABLE COMMUNICATIONS

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Opportunities created by the growth of cable television demand a coherent national policy, not the patchwork of rules and regulations that threaten the industry in its formative stages. In response, the U. S. Government has recently released a report dealing with a wide range of policy questions about the future of cable. This report, prepared by a seven-member committee chaired by Clay T. Whitehead, Director of the Office of Telecommunications Policy, recommends that:

- control of cable distribution facilities be separated from control of programming and other services provided over cable systems
- no restrictions be placed on cross-media ownership or multiple ownership of cable systems
- telephone companies not be permitted to control or operate cable systems within their own service areas
- consumers have the opportunity to purchase new television programming and other information services over cable without being impeded by government-established barriers
- programming and other services not be subject to government regulation of content or prices
- incentives to create programming for cable be fostered by full applicability of copyright laws to channel users
- strong legal and technical safeguards be erected to protect individual privacy in cable communications
- cable services be assured for the poor and for residents of rural areas
- participation by minority racial and ethnic groups in cable ownership, operation, and programming be facilitated.

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Other recommendations deal with ownership and control of cable network operations and with the institutional and jurisdictional framework for cable regulation, including the appropriate responsibilities of city and state governments. The Committee Report also outlines a suggested demonstration project designed to test the technical and economic feasibility of potentially attractive new services on cable.

Together, these recommendations are aimed at (a) modifying government regulation of the cable industry so that its growth is more determined by free market forces, and (b) enhancing public access to cable channels, thereby encouraging freedom of expression.

In seeking to make useful and practical recommendations, the Committee faced conflicting pressures. On the one hand, it felt strongly that the future of cable should be determined by marketplace forces rather than a panoply of government regulations, restrictions, and subsidies. On the other hand, to gain credibility and acceptance for its recommendations, the Committee felt the need to gain the support of major groups within the industry (such as over-the-air broadcasters, cable operators, and program producers). Thus the Report is a "compromise" document which seeks to balance conflicting pressures in striving for a broad consensus. It does treat major issues meriting public discussion; it does identify possible solutions to further improve the basis for informed public debate; but it also has weaknesses, stemming largely from the pressures of compromise.

As a case in point, the Committee recognizes that adoption of all of its recommendations simultaneously would have a disruptive effect on the struggling and still relatively small cable industry. (Although in the United States there are now about 8 million residential cable subscribers, this comprises only about 12 percent of total households.) Therefore, the Committee proposes a "transition period" during which some recommendations would take effect immediately, some on a phased basis; others--some of the most important--would not take full effect until after the transition period. A major question, then, is how to define the end of the transition period. The Committee suggests that the period be regarded as completed when cable serves 50 percent of all potential subscribers; this may take many years or even decades. While the principle of a transition period is sound, the problem of definition remains.

Cable Ownership and Control

The single most important recommendation in the Report deals with the separation of program content from cable ownership and operation; the owners of cable distribution facilities would be required to offer on a nondiscriminatory basis access to channels leased by outside program suppliers. Under current rules of the Federal Communications Commission a cable operator may himself use access channels to the extent that an independent program distributor does not demand "first-come, nondiscriminatory access." In practice, however, the cable operator could become a monopolist, since access channels are more easily and cheaply available to him than to others, thus deterring potential entry. Under the Cabinet Committee scheme this potential barrier to access would be reduced by prohibiting the cable operator himself (1) from originating programming on the many access channels that may be available on large-capacity cable systems, or (2) from having an ownership interest in those program suppliers seeking access to his system.

However, the fact that the Report is a compromise document is best illustrated by a statement buried in a long footnote asserting that it would "not be inconsistent with the separations principle to allow the system operator to have program control over one or two additional channels" (emphasis added). This clause, obviously included to help gain support from the cable industry, could give the cable operator a good deal of power, depending on the geographical coverage of his system and the financial resources he is willing to devote to programming access channels.

This potential problem of residual monopoly power is troublesome also in light of the Committee's recommendation that cross-ownership of media not be restricted; that is, television broadcasting stations and newspapers would not be prohibited from owning cable systems within their market area. This recommendation makes sense if there is indeed a full split between the owners of the distribution facilities and the producers and suppliers of television programming. With this separation, it makes little difference who owns the physical facilities. But to the extent the separation is not complete, then restrictions against cross-ownership must be considered more thoroughly than they have been in the Report.

The recommendation that telephone companies not be permitted to own or control cable systems within their service areas may seem inconsistent with the preceding recommendation which permits cross-ownership. After all, if the separation between facilities and programming content is complete, it could make no difference whether newspapers, broadcasting stations, or telephone companies were to own cable systems within their own service areas. Moreover, prohibiting telephone companies from owning cable systems could retard the eventual development of unified communications systems involving a mix of television cables and other facilities, including conventional telephone components, which could offer a wide range of television, voice, and data services. The rationale for this recommendation, however, stems from the Committee's desire to promote competition. If telephone companies are permitted to own cable systems in common service areas, the Committee fears that "widespread expansion by telephone companies into the cable business could stifle development of competitive communications service."

Payment for Service

Another major recommendation deals with so-called "pay cable," where viewers pay extra (in addition to the ordinary monthly subscription fee for "basic" cable service) for special channels or special programs not otherwise available. For example, some cable operators today offer subscribers (for an additional charge typically of $5 or so per month) a group of movies that are newer than those shown on commercial advertiser-supported broadcasting stations.

Bitter controversy has arisen in recent years about the extent to which cable subscribers should have the option of enlarging their freedom of choice by paying directly for programs that might not otherwise be available, just as they are permitted to buy magazines, books, and records. One argument is that pay cable will tend to "siphon" away programming from advertiser-supported television; eventually the viewer may have to pay an extra charge for the same programs he sees free today. In response, the Federal Communications Commission has established "anti-siphoning" rules that permit cable operators to offer certain kinds of pay programming, but with restrictions to insure that siphoning from advertiser-supported television does not become serious. (For example, current FCC rules specify that only movies less than two years old may be shown on pay television, since only movies older than that are typically shown on advertiser-supported broadcasting stations.)

The Committee recommends that after the end of the transition period anti-siphoning rules be eliminated except for certain kinds of sports programming. But here again are elements of compromise: During the transition period the Committee takes a much weaker stand. After reviewing the FCC's current anti-siphoning rules, the Committee merely states: "We do not endorse these particular rules, but we recommend that the FCC have the authority to adopt reasonable anti-siphoning provisions to the changing conditions in the broadcast, cable, and programming industries, selectively lessening the restrictions of the rules." How "reasonable" rules are defined or how they are to be "selectively" lessened are questions left unanswered.

These recommendations regarding pay cable are curious also because freedom from anti-siphoning rules is most needed <u>today</u>, in the early stages of cable growth to permit the industry to expand and, indeed, to reach the 50 percent level that would mark the end of the transition period. But the Committee's recommendations are just the reverse--relatively severe anti-siphoning rules in the early years and only after the cable industry has reached maturity would they be eliminated.

<u>Laws and Regulations</u>

Consistent with its goal of facilitating public access to cable channels and promoting freedom of expression, the Committee recommends that the rules commonly applied to television broadcasting not be applied to programs originated on cable channels. In particular, the Fairness Doctrine (under which broadcasting stations must present both sides of important controversial issues) and the equal-time rule (under which broadcasting stations must offer one political candidate an amount of time equal to that purchased by an opposing political candidate) would not be applied to cable channels, where presumably ease of access and a diversity of voices could be assured as it is today in newspapers and other print media protected by the First Amendment to the U.S. Constitution. Notably, this recommendation is to be put into effect immediately. As the Committee observes, "it is essential from the outset that the use of the cable medium for distributing programs must be free from administrative regulation of content."

Today cable operators are not subject to copyright liability for any of the programs originated on broadcasting stations and carried on cable channels. (The cable operator is, of course, required to pay copyright on programs that he originates, just as broadcasting stations are required to pay copyright for any programs they originate.) Much controversy has arisen about whether copyright should be paid by cable operators on broadcast signals they carry and, if so, how much. Although the Committee recommends that copyright payments be made by "full applicability" of copyright laws, it fails to define clearly what is meant by full applicability, and offers no criteria by which to judge appropriate levels of payments. This is perhaps one of its weakest recommendations. All major industry groups--program suppliers, broadcast station owners, and cable operators--have agreed in principle that copyright payments should be made. The stumbling block is determination of appropriate levels of payment. Here the Report offers little guidance.

The Committee aptly recognizes the problem of protecting individual privacy in light of the many channels and the many new services that eventually could be offered by cable. Although providing no firm and clear-cut answers in this area of great uncertainty, the Committee is nevertheless on firm ground in observing that "cable lends itself to use of technical safeguards, such as scrambling codes and locked channels. The FCC, in conjunction with other government agencies should develop and implement technical standards and requirements necessary to afford added protection of privacy in cable communications."

Extension of Service and Participation

It would seem reasonable enough that cable services be assured residents of rural areas and the poor in accordance with the Committee recommendation. However, low-population-density rural areas are very expensive to serve on a per-home basis, and questions arise about the extent to which subscribers in more densely populated areas should be required to subsidize service to their rural neighbors. This situation is troublesome because in many metropolitan areas low-income groups live in high-density areas relatively inexpensive to cable, while affluent families tend to live in the lower-density suburbs.

It is easy to agree that participation by minority, racial, and ethnic groups should be facilitated. But the Committee does little more than recommend to relevant government agencies that "special attention" be devoted to assure ample employment opportunities for minority group members and that "high priority" be given to such possibilities as loan guarantees to encourage minority ownership and control of cable facilities.

The Future Market

It is important to note that the Report does not resolve the many uncertainties that surround the future of cable television in major U.S. cities. Cable has thus far flourished largely in mountainous areas and in smaller cities where over-the-air service is limited or reception poor. Vancouver and Montreal, Canada, have the largest cable systems in the world, each with more than 100,000 subscribers. Their growth has been rapid because signals from U.S. stations close to the Canadian borders can be brought in to enlarge the range of programs available to Canadian viewers. But in most U.S. cities, over-the-air broadcast service is already good. In addition to three advertiser-supported networks, in many areas there are one or more independent commercial broadcasting stations, plus a public television station supported largely by government and private foundation sources. With this relatively rich menu of television programming, serious questions arise about how many people will be willing to pay $5 or $6 a month for cable service. Perhaps a market might exist if new services were added on cable in the educational, medical, and other fields. But these services are yet to be perfected. Here the Report is useful in outlining a demonstration project to test the possibilities. But nagging questions remain of whether, under <u>any</u> set of government policies, there will exist a strong market for cable systems in major metropolitan areas.

Finally, we must note that the recommendations of the Committee are not likely to be implemented in the near future. Some would require Congressional action, others changes in FCC rules, and in general, a greater degree of political consensus than exists today. Long delays arose in completion and release of the Report. Only two of the seven Committee members remain in government, and the Report has not yet been endorsed by the President.