Should Telephone Companies Provide Cable TV?

Thomas W. Hazlett

"Communism is a drag, man. It's like one big telephone company. Capitalism gives you a choice, baby, and that's where it's at."
—Lenny Bruce

The impact of television on contemporary society is enormous by any measure. But equally compelling is the way in which television is itself changing. In just the past decade, the standard three to five broadcast channels available to most U.S. households have been replaced by the abundance of cable. Today 54 percent of American homes subscribe to television services that typically deliver 30 to 60 channels of around-the-clock programming. Premium movie channels, such as HBO and Showtime, full-time sports fare on ESPN, rock music videos on MTV and VH-1, 24-hour news or public affairs on CNN, FNN, and C-Span, documentaries and high culture on A&E, science on Discovery, and ethnic programs on Black Entertainment Television and foreign language channels, to name some of the specialty networks, have dramatically expanded viewing choices beyond what the old broadcasting triopoly offered. There has been a veritable revolution in the structure of the industry.

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From its earliest days, cable television has been subject to intense regulatory scrutiny. But in the mid-1970s, the federal government began to relax rules that impeded the development of cable TV. Indeed, the recent rise of cable is largely accounted for by these changes. As a result, local privately owned cable television systems are in all but a small number of cases unregulated franchised monopolies. In most locales the municipal government will not allow direct competition to the existing cable system, although local officials have no ability to deter monopoly pricing effectively. This arrangement has obviously worked to the advantage of incumbent cable firms. But the current regulation of cable does not really pass the "smell" test for policymakers concerned either with ensuring competition in the marketplace or, more particularly, with freedom of the press in an electronic age.

At the federal level, in fact, the parochial interests are in retreat. There is great dissatisfaction with the local cable monopoly, both in Congress and among federal regulators. The Department of Commerce's National Telecommunications and

Information Administration (NTIA) concluded in a June 1988 study: "The common occurrence of exclusive cable franchises does not serve the public interest. The franchising process has seriously impeded entry by competitors and imposes substantial costs on franchisees, cable subscribers, and the public." Several committees in the House and Senate have convened hearings on "the cable monopoly," and great excitement surrounded the August 1989 General Accounting Office report that basic cable prices had increased 26 percent in less than two years since federal deregulation became fully effective. Bills to reregulate the industry's rate structure are now circulating freely.

But the Federal Communications Commission, the NTIA, Sen. Albert Gore of Tennessee, and others have offered another policy response. They propose to eliminate the barriers that now prevent local telephone companies' entry into video.

The Regulatory Barriers to Telephone Companies' Entry into Cable

Since 1970, the FCC has maintained a ban on cross ownership that prohibits local telephone companies from operating cable television systems within their service areas. The only exception to this ban occurs in rural areas where low housing densities make provision of cable unlikely unless it is offered by the telephone system. In such cases, telephone companies may apply for "214 waivers" from the FCC. Some 300 cable systems (out of about 8,400) are operated by telephone companies.

In addition to the FCC cross-ownership restrictions, two other barriers are in place. First, Judge Harold Greene's Modification of Final Judgment in the 1982 settlement of the *United States* v. *AT&T* case bars the seven "baby Bells" from entering any information-based line of business. This has been taken to include television broadcasting or cablecasting (although the informational content of "Geraldo" appears quite subtle). As the regional Bell operating companies account for 80 percent of the national telephone market, their court-ordered exclusion is a key issue. Second, the 1984 Cable Communications Policy Act essentially codified the 1970 FCC cross-ownership restrictions. Hence, for telephone companies (including the regional Bell companies) to enter the cable television business in their own service areas, the FCC would have to relax its 1970 restrictions, Judge Greene would have to permit a change in the Modification of Final Judgment, and Congress would have to amend the 1984 Cable Act.

This may sound like a larger burden than it is. The federal courts could obviate the three-pronged reform process by finding that the current restrictions on electronic publishing by telephone companies are overruled by constitutional guarantees in the First Amendment's free speech clause. Even without judicial intervention, the reform process is advancing. The Commerce Department's June 1988 NTIA study cited above called for reform of the cross-ownership restrictions to allow the telephone companies to transmit video signals as common carriers. The FCC went even farther in its September 1988 "Further Notice of Inquiry and Notice of Proposed Rulemaking." The FCC argued strongly that the public interest in increased competition in the television marketplace should force an end to the cross-ownership restrictions. The FCC further advocated that telephone companies be allowed to enter video markets via stand-alone cable subsidiaries. Thus, the FCC would not limit telephone companies to common carrier transmission functions. Similarly, there is strong congressional interest in providing some competition to local cable monopolists, even if that means revisiting the 1984 Cable Act and transferring authority over the cross-ownership restrictions on the regional Bell companies from Judge Greene to the FCC. (Such a measure has been introduced by Rep. Al Swift of Washington and Rep. Thomas Tauke of Iowa.)

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Several important interest groups have filed official policy statements on the issue of telephone company entry into cable. The record they created offers us an informed view of the political economy of cable competition. Because each proponent can be expected to offer self-interested arguments to produce policies that will maximize the wealth of its members or principals, we can infer much of the economics of the industry from the positions taken on contemplated reforms. This allows us to analyze the prospects of telephone companies' entering cable markets and offers insights into current policies and institutions as well.

The Rise of the Local Cable Monopoly

That the cable industry should enter the 1990s as the much envied and noticeably spoiled child of favorable public policy is ironic to long-time observers of federal regulation. Beginning in the early 1960s, the FCC launched a pointed regulatory attack on the ability of cable to compete in the television marketplace. The policy came at the behest of the National Association of Broadcasters, whose membership had become concerned that the importation of "distant signals" into local TV markets would reduce over-the-air viewing audiences and, hence, advertising revenues. In classic protectionist fashion, the regulated industry (the over-the-air broadcasters) successfully directed its regulators to outlaw the competition. Cable systems were confronted with a bizarre regime of restrictions in the top 100 local TV markets (in 1966) and then the top 50 (in 1972) that seriously constrained their ability to offer consumers any more than the signals already broadcast in the community in question. Since this service would provide viewers with clearer reception, the cable industry could only help the local broadcasters. The cable industry served only 12 percent of U.S. households in 1975, and it was a very weak stepchild in the regulatory debates in Washington.

But new winds were blowing. The political drift of federal agencies into deregulatory agendas in the mid-1970s along with the increasing willingness of the courts to scrutinize and limit agency decisions combined with the rush of technology—as satellite communications created new opportunities for cable network creation—to push back entry barriers in local television markets. Regulations limiting cable operators' ability to package new services in competition with broadcasters fell by the wayside until 1984, when Congress gave its blessing to the local franchising process while pulling the plug (with a two-year phaseout) on municipal rate regulation of basic cable service. (Premium service prices had been decontrolled in 1979 by the FCC.) The astounding result of a decade of deregulation was that cable had gone from the lowly status of a politically excluded competitor to that of a government-sanctioned—but unregulated—monopolist.

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The current public policy addressing cable has evolved with an interesting mix of supporters. Federal regulators who became "uncaptured" with the deregulatory momentum of the 1970s have actively sought to free cable from its anticompetitive constraints. The broadcasters have been on the losing end of this series of reforms, and the now seriously declining market share of over-the-air television stations (the reciprocal of skyrocketing cable network viewership) is evidence that their political instincts were economically correct. Conversely, Hollywood program producers have actively supported the growth of cable, as it creates new demands for their output and breaks the anticompetitive nature of the network triopoly as the primary bidder for such products. Finally, local officials have welcomed the expansion of cable unbound by federal regulation, while zealously guarding their prerogatives in controlling local franchising. To select the firm that will be allowed the very lucrative opportunity to wire their city, the local officials want deregulation right up to the steps of City Hall. Reform that frees the cable industry is unambiguously positive, then, until that freedom restricts the ability of the city government to use its discretion in regulating the cable franchise.

The political instability now rocking the cable television market arises because the industry has been far too *economically* successful for its *political* good. Cable has achieved an ambitious regulatory reform agenda in a few years, and it now finds itself with market values in excess of three times capital. (This suggests that substantial monopoly profits are capitalized in the typical cable system.) But cable has achieved such an enviable position by essentially cutting out all the political constituencies that once had a stake in its regulation. For example, federal regulators interested in procompetitive policies find the unregulated monopoly franchise offensive on public-interest grounds. In addition, program producers, as sellers to cable television systems, find that the emergence of local cable monopoly has largely replaced one market power problem (network triopoly) with another (a cable monopsonist in every community). Finally, municipalities, as auctioneers of the monopoly franchise, find that the gains once enjoyed by being able to assign profitable opportunities have now evaporated with the removal of rate controls (the city council would periodically vote requested rate hikes up or down) and with the shifting of the burden of proof in franchise renewals to the city (deni-

als have to be justified according to criteria set by the 1984 Cable Act).

While the profitability of the cable industry has never been higher, its political vulnerability has never been more evident—and the two events are connected. By fortuitously steering themselves through the regulatory maze to arrive at the bliss point of a legally protected but unregulated monopoly, cable companies have traded friends for wealth in the political game. Now perched atop unparalleled industry success, trade association leaders are professing extreme nervousness over the various legal initiatives being launched from a variety of quarters. In failing to spread the gains from monopoly across a wider spectrum of players, the cable industry is now in the position of the rich but lonely heir of fortuitous public policy. And there are plenty of out-of-the-money interests who intend to use the political process to regain a piece of the action.

The municipalities feel most cheated. Their support of the local franchising scheme had been consistent. The dynamic that united both the grantors and grantees of municipal cable franchises was that the process would pay dividends to both sides. In the pro forma arrangement a city would auction off the franchise to the cable firm bidding not the highest dollar amount to the municipal treasury (a maximum bid of 5 percent of gross revenues had been set by the federal government), but the most compelling set of political payments, favors, or subsidies. These commitments often involved subsidizing politically preferred services, such as local origination and public access programming on the cable system. These services were extremely popular with citizens influential at City Hall, but virtually never watched by cable's ratepayers, and hence they were highly unprofitable. Another form of payment, "rent-a-citizen," gave individuals with locally important political connections stock in the contending firm in exchange for their support in lobbying city council votes. (This was very similar to the methodology employed in Japan's Recruit scandal, although much of the Recruit stock went to the actual political decisionmakers.) And campaign contributions were yet a third form of payment in this off-budget franchise auction.

When the Cable Act passed in 1984, the cities felt as if the cable industry had reneged on its obligations to share its monopoly profits. The major franchises had been issued (and new competitive entry barred) by the municipalities; the cable companies were expected to continue the flow of subsidies and campaign contributions that were tacitly their end of a quid pro quo. But the federal legislation gave the franchise holders two key rule changes. First, the cable industry gained rate deregulation. City governments could no longer hold up a rate increase request by a firm that did not comply with some politically motivated compromise on cross subsidies or campaign contributions. Second, cable franchisees acquired more secure property

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rights as the burden in nonrenewals was shifted to the cities. Hence, incumbent cable franchisees need offer much less to franchisors at renewal time. The collective effect of the Cable Act, then, is to essentially remove municipal officials from the regulatory loop once a franchise is awarded. Now cable firms have little incentive to make side payments for political support to maintain their monopoly positions. While cable firms may have included local politicians in the original bargain, the federal legislation has "expropriated" the locals from further dealings.

Hold the Phone: A Competitive Solution

Enter the telephone company. In the six years since divestiture of the Bell System, the telecommunications industry has undergone a radical transformation similar to that seen in the television business. Most pointedly, the old lines of competition and monopoly are no longer fixed. The long distance and terminal equipment markets, long the monopolized purview of Ma Bell, now experience robust rivalry. And provocatively, even local telephone service, the lone sector that continues its traditional monopolistic ways, is conducted by firms that compete in nonmonopolized markets such as phone equipment and yellow pages. As fiber-optic technology becomes increasingly used in the telephone system (already some three million miles have been laid), the day approaches when the local telephone company will have the bandwidth to provide not only phone calls, but data processing (now possi-

ble via modem hookups) and video signals (virtually impossible over the current copper wire). It is evident that the local telephone companies want their MTV.

The reasons are clear. First, cable TV is profitable. The typical cable television subscriber spends about $25 monthly, far more than what he pays for the typical local residential phone connection charge.

Were the federal government to permit local telephone companies to enter the cable industry only on a competitive basis, in the long run such entry would increase competition for consumers' dollars and lower prices.

Second, the cable industry is (as noted above) unregulated and highly lucrative. Third, the cable business is still in its high-growth phase. The sky is the limit. And fourth, the possible efficiencies from integrating video and voice transmission are apparent. With the coming fiber-optic technology offering essentially unlimited bandspace, the opportunity for high-definition television and heretofore undiscovered voice, video, and data services is particularly inviting when the local telephone company envisions the opportunities created by providing all these systems from just one line.

As noted, the local telephone companies have been barred from the cable business since 1970. In instituting and respecting this ban for some two decades, the FCC, Congress, and the courts have contended that the local exchange companies had the ability to engage in anticompetitive behavior against cable firms by virtue of their control of many of the poles and conduits that cable companies use. Only by removing the local telephone companies from a competitive line of business altogether to eliminate their incentive to act predatorily could they be trusted not to impede the development of the fledgling cable industry.

As the federal regulators now see it, the cross-ownership ban was successful. The cable industry gained access to the poles (although it needed the Pole Attachment Act of 1978 to set fair rates of compensation) and wired the nation. Cable is available to nearly 85 percent of U.S. households. Now the cross-ownership ban is no longer necessary. The risk of the local telephone companies' preempting a mature cable industry is moot; the capital now in place will not vanish if a competitive telephone company wire is strung alongside cable. Thus, for those who see the current cable franchise monopoly as a disappointing end to a long deregulatory journey, the possibility of entry by local telephone companies appears auspicious.

The principal problem in allowing local telephone companies to enter the cable market is that of cross subsidy: will the telephone company attempt to include cable costs in its state-regulated telephone rate base? It is feared that such tactics would enable telephone companies to undercut the competition in the unregulated cable television market. The issue of cross subsidy is now fairly standard for state and federal regulators, since regulated firms are allowed subsidiary operations in a host of unregulated markets. In its 1988 Notice, the balancing of costs and benefits was clear to the FCC: "The evidence before us suggests that the prohibition against telephone companies' providing cable television service within their telephone service areas no longer serves the public interest." Noting that cable companies have access to 80 percent of U.S. households, the commission contended that the ban limited consumers' choices and prevented market efficiencies. The commission held that nonstructural safeguards would probably prevent potential anticompetitive conduct by the telephone companies.

The central factor driving proentry policymakers is that the current arrangement leaves consumers with a protected but unregulated high-priced monopolist. From a consumer welfare perspective, there is now the opportunity to replace a high-priced, noncompetitive service with a potentially robust duopoly and to create the necessary conditions for ending the local phone service monopoly itself (via a "two wires to the home" policy). Were the federal government to permit local telephone companies to enter the cable industry only on a competitive basis—not via merger—in the long run, since wired capital is sunk capital, competitive entry by telephone companies would increase competition for consumers' dollars and lower prices. It does not require a subtle analysis to conclude that the cable industry is fighting this regulatory initiative with its heart and soul (not to mention a 15 percent surtax on member dues). The positions of the various affected interests reveal the economic effects of this possible market restructuring via regulatory reform.

The Interested Parties and Their Stated Positions

The Cable Industry. In a very aggressive political offensive, the National Cable Television Association

(NCTA) has dedicated itself to opposing staunchly any possible *competitive* entry by local telephone companies. This does not, however, preclude telephone companies from entering the cable industry through other means. In fact, important cable industry leaders have openly endorsed the entry of telephone companies via purchase of existing cable systems. If telephone companies were allowed to enter the cable industry only through the acquisition of existing systems, market prices for cable systems would climb even higher. But there is an important distinction to be made in identifying the beneficiaries of competition depending on the nature of entry. If telephone companies were allowed to enter the cable market competitively, the cable incumbents could get clobbered, but consumers would benefit. In the entry-by-acquisition scenario, the owners of existing cable firms would get fat.

Judged in this light, the litany of cable industry horror stories about the anticonsumer consequences of telephone company involvement in cable loses credibility rapidly. If the telephone company's monopoly power is bad for consumers when it directly competes with and defeats a cable incumbent in the telephone company's service area, its monopoly power should be equally offensive when it smoothly obtains sole-supplier status by acquiring a cable system elsewhere. Indeed, the latter circumstance fails to offer consumers even the intermediate period of robust price competition that has occurred in those places where head-to-head cable competition has broken out in today's market. In short, the inability of the cable industry to present a united front against all forms of "predation" by local telephone companies leads to the conclusion that cable's arguments are grounded in pure industry protectionism—without compromises to appeal to nonindustry interests.

Broadcasters. The National Association of Broadcasters does not make us guess about its protectionist motives; the NAB draws the picture for us. In a typically frank speech, NAB Vice President John Abel told a Washington, D.C., audience on April 5, 1989: "It is hard to imagine that having another distributor of programming in the marketplace, such as the telephone company, is in either the short or long term best interests of the broadcast industry." Abel concluded that if the entry of a new program competitor would harm broadcasters' interests, it must be bad for America, Q.E.D. This extreme parochialism is analytically convenient, of course, in allowing us to peer straight into self-interested arguments.

The NAB argues that telephone companies should be allowed to enter as long as they do so as a transmission medium. Further, strict controls should forbid telephone companies from integrating into program packaging or production. This is the common carrier solution. The broadcast industry's economic position makes clear why such a position is taken. Broadcasters have long considered themselves competitors of cable; indeed, their successful capture of the FCC in the 1960s and 1970s solidified a dominant market position that is only now seriously threatened. The cable industry, however, not only poses as a (horizontal) competitor to over-the-air TV, but is a (vertically downstream) buyer of broadcasting's programs. About half of what cable customers watch, in fact, is broadcast television fare.

In the overwhelming majority of markets where one cable firm operates without direct competition (perhaps as much as 1 to 3 percent of the national market enjoys direct cable-on-cable or cable-on-multichannel microwave rivalry), broadcasters must deal with the sole cable system. This grants the cable firm enviable monopsony bargaining power. One of the most intense interindustry inside-the-beltway squabbles of the late 1980s involved the "must-carry" rules enacted by the FCC. (These rules forced local cable systems to carry all locally available broadcast TV signals.) In 1985 the courts declared them an unconstitutional violation of cable operators' First Amendment rights.

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The fact that broadcasters are so adamantly opposed to program development by telephone companies indicates that such entry would have powerful, positive effects on consumer welfare. That the telephone companies have no special advantages in providing programming is clear; they would inevitably be led to bid for the same sorts of movies and television series for which cable networks and broadcasters currently compete. The somewhat more subtle issues about telephone companies' using their regulated rate bases to manipulate competitive markets does not concern the broadcasters,

who focus exclusively on the issue of declining audience share for NAB members. This is entirely logical politically—indeed, were it not so, the association members would have an excellent cause of action. The conclusion, however, that it is good for telephone companies to provide transmission since they would offer greater competition to acquire broadcast programming while it is bad for them to provide programming indicates that the NAB considers telephone companies to be a viable competitive force in both ends of the business. The fact is that the broadcasters' financial interest is in promoting greater competition only in the downstream delivery portion of the industry to overcome the bottleneck currently created by cable's local monopoly. This leads directly to the dichotomous twist in the broadcasters' position on entry by telephone companies.

The broadcasters' unease about the ability of telephone companies to be more than common carriers by integrating into full-fledged cable companies and program packagers is indicated by the somewhat frantic political state of the industry. This past summer the over-the-air broadcasters launched a rather remarkable public relations campaign on television that featured commercial spots with Walter Cronkite. The theme was "free TV" and its very special place in American society. The overt message was where we would be as a nation without advertiser-supported television. The covert message was born of the regulatory quirk that has traditionally awarded broadcasters spectrum rights without charge. Despite extremely high rates of return over several decades, the quid pro quo between broadcasters and the government has always involved free airwave rights for broadcasters in exchange for political obedience and the provision of unprofitable services such as local programming cross subsidies.

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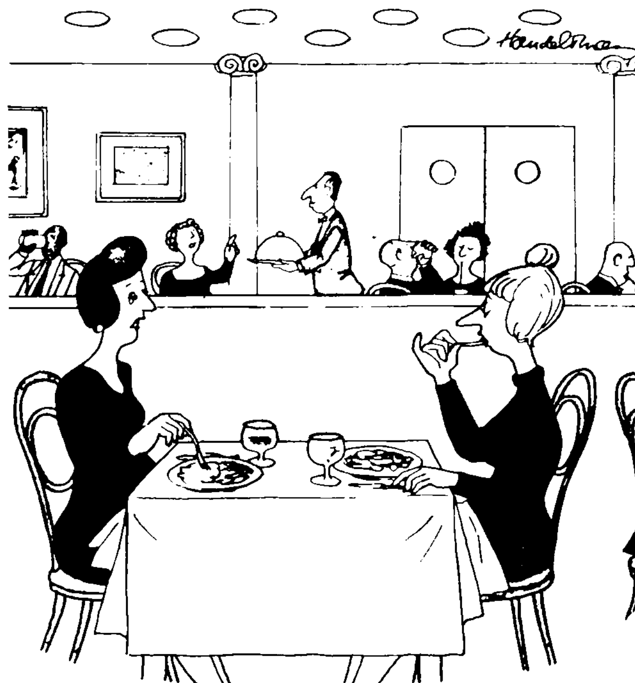
This special arrangement has been entirely too cozy for the tastes of First Amendment scholars and those civil libertarians who have carefully studied the matter (for example, Ithiel de Sola Pool, Lucas A. Powe, Jr., and Matthew Spitzer), but the significant development today is the impending demise of spectrum scarcity, upon which the entire deal is built. As the airwave transmissions become replaced by wires to the home, the irrelevance of spectrum rights becomes apparent. Coaxial copper cables provide nothing more than "spectrum in a tube," and soon fiber threads will provide virtually unlimited spectrum to the home. So who needs the local broadcast antenna when 1000 megahertz of bandwidth (150 channels given today's frequency configurations) can be plugged into the TV set? In the foreseeable future television stations could become superfluous as transmission mediums, and television networks are likely to become just another (competitive) programmer. And there are few barriers into programming. A new angle is necessary to protect the interests of broadcasters as they are currently configured. The NAB desperately hopes that the great American tradition of "free TV" might be that angle.



"I've deregulated Arthur, but he still doesn't run very efficiently."

Motion Picture Producers. The interests of the actual makers of programs are aligned closely with those of television consumers. Producers use television to get their films before viewers with the least amount of monopoly distortion in between. Motion picture producers are upstream manufacturers selling to downstream distributors—the TV

stations, cable firms, and perhaps telephone company TV systems. All of these outlets sell directly to consumers (where sales may be to advertisers, viewers, or both). Hence, the fact that the Motion Picture Association of America (MPAA) adamantly supports entry by telephone companies should be counted as revealing evidence.

In a proceeding before Judge Greene in 1987, the MPAA argued specifically for Baby Bell entry into cable by noting that "the BOC's [Bell operating companies] are in a unique position to become a competitive force in the broadband communications marketplace." The MPAA maintained that the telephone companies are "sufficiently established and financed to be able to break the cable industry's hold over sources of programming." Translated, this means that producers do not enjoy dealing with local cable monopsony buyers of their output and thus would prefer to inject competitive bidding. That they are enthusiastic about entry by telephone companies is a testament to their belief that such enterprises could effectively offer rivalry to the entrenched cable companies.

Municipalities. Local politicians are the most fascinating of the interest groups. Through their various associations, most notably the National League of Cities (NLC), the municipalities have been active participants in the regulatory battles involving cable franchises for well over a decade. As detailed above, however, they have lately been defeated warriors, effectively removed from the lucrative market opportunities that they actively created for thousands of existing cable systems. But there is a way back: entry by telephone companies.

First, it is necessary to discuss the philosophical disposition of the NLC toward cable competition. It is safe to say that the NLC views the idea of competitive cable with unmitigated hostility. The NLC has provided legal talent, conducted seminars, engaged in lobbying efforts, filed amicus briefs, and coordinated far-ranging legal and political efforts to squelch the asserted rights of unfranchised cable firms that have sought to compete in the marketplace. In one pending case, for example, the NLC has provided legal counsel (although not legal fees, which cities routinely cover with tax dollars) and active support for the city in *Preferred Communications* v. *City of Los Angeles.* The fundamental issue is whether the city may deny entry to a cable operator who asserts a First Amendment right as an "electronic publisher."

Despite their hostility toward competition, the NLC, in concert with the U.S. Conference of Mayors, the National Conference of Black Mayors, and the National Telecommunications Officers Association, has endorsed federal relaxation of the cable/telephone cross-ownership ban. How could the municipalities oppose head-to-head competition in cable but support head-to-head cable/telephone competition? They do not. City officials go only so far as to endorse ending the federal abolition of competition. They are laboriously careful to note that they favor enhanced local control of the process and have in fact called for reregulation of the cable industry. To the NLC, then, the opening of the market means a healthier competition for the exclusive municipal franchise. Only if the local government should itself deem that entry by the telephone company is in "the public interest" would that translate into a competitive cable industry.

Federal reforms to allow entry by telephone companies would, given the existing franchise scheme in most cities, simply put the municipal governments back in the saddle. Serious concessions could again be extracted from the recalcitrant cable incumbents, who since 1984 have been able to thumb their noses at local administrative bodies unable to deny rate increases or credibly threaten to deny franchise renewals. The power to allow telephone companies' entry would be the franchise beef local politicians have been missing since the Cable Act. Municipalities would have new leverage

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with which to enforce the cable franchisees' compliance with implicit and explicit terms and conditions favored by local politicians.

Those close to the process so readily understand this logic that the Ohio Public Utilities Commission has specifically petitioned the Federal Communications Commission to relax the cross-ownership ban on a state-by-state basis, with each state qualifying for the federal reform by first enacting a statute removing localities from the monopoly creation process. The Ohio PUC's argument is particularly cogent. In identifying the source of trouble, it points to "the franchise mechanism ... [that] tends to

inhibit competition to the detriment of consumers." The Ohio PUC correctly evaluates the present market dilemma: "The cable television industry is correctly characterized as an unregulated monopoly in need of a dose of free market discipline." And most adroitly, the commission suggests conditioning the legalization of telephone companies' entry into cable on state preemption of "local franchising authorities to the extent necessary to eliminate this artificial barrier to entry and competition." The aim is to prevent the franchising agents, who might hold such proconsumer forces hostage to shore up sagging political fortunes, from hijacking the possibilities for robust cable competition.

The municipalities' opportunism is apparent when one notes the divergence between the intellectual plausibility of the arguments simultaneously advanced. In its brief to the FCC regarding the cable/telephone cross-ownership restrictions, the NLC repeatedly makes the case that competition in video services is mandated by the public interest—everywhere very carefully under the supervision of "local control," a code for municipal franchise. These repeated paeans to the social value of competition are clearly intended as a bait and switch; what the uninitiated will miss is that what the NLC subtly intends to promote as "competition" is "competition for the municipal franchise," not "competition for consumers." But this sleight of hand unravels even to those mildly interested in the appendix to the filing, which includes the official NLC policy statement regarding cable communications law. In outlining its approach to legal challenges to the local franchise under First Amendment law, the NLC defends current cable policies by asserting that "cable television is a natural monopoly." Perhaps it is unexpected, even rude, for one to read both a brief and its appendix, but the flipping of economic "facts" for the convenience of political rationalization reveals some highly elastic arguments.

Conclusion

What may we conclude, then, about the interests of those most concerned with telephone companies' entry into cable? First, the intensity of the debate indicates some substance to the threat. Telephone companies are taken very seriously as potential entrants. Given the cable capital already in place, we may discount the possibilities of preemptive or predatory competition by telephone companies, particularly as all parties to the debate accept that the telephone and cable interests would be conducted as separate business operations to mitigate the cross-subsidy problem. From the testimony of those marketers who intend to sell into the cable television marketplace, consumers should feel confident that increased competition will likely be the result of relaxing the cross-ownership restrictions.

Unfortunately, the political process probably will continue to delay the decision. First, there are coordination problems among no fewer than five governmental bodies—the courts, the executive branch, Congress, the state regulatory commissions, and the localities. In addition, it is clearly in the interest of some decisionmakers to delay a resolution. Congressional hearings are an excellent platform from which to gain publicity and influence, and the political consequences of action cannot be measured too hastily. A hurried policy decision would likely prove to be a suboptimal political decision.

But the courts may hurry everyone along. Should a First Amendment precedent be established that telephone company subsidiaries are people (for constitutional purposes), then the ball will roll very quickly. Local and federal governments would all lose their power to limit the information services provided by telephone companies. But plugging the telephone companies' wires into television sets may not proceed instantly. Some firms may decide to delay entry until the integrated fiber-optic wire to the home is available for broadband transmission. Others may contract with competitive cable firms to overbuild existing systems instantly. It is hard to predict exactly where the market will end up, but that is the essence of competitive rivalry.

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