To fully understand the difficulties facing America's language minority students, and the need to accept my amendment, let us take a serious look at some very hard facts.

The most recent estimates by the Department of Education Report that there are over 2.4 million limited English proficient students in America's elementary and secondary school today. This is a very conservative estimate, and the 1990 census data may send this number skyrocketing upward.

In California, 1 out of every 6 students is limited English proficient; in New Mexico, 1 out of every 5 students is; in Arizona, Texas, and Alaska, the figure is greater than 1 in 10.

It is worth noting that the number of language minority students, and the special educational services they need, is by no means an issue of concern only to schools and States in the Southwest. New York, Massachusetts, New Jersey, and Illinois have well over 350,000 LEP students among them.

The challenges faced by one large school district in Arizona is indicative of the problems faced by many districts nationwide. The Tucson Unified School District has over 57,000 students, and almost 30 percent have a primary language other than English. Hispanic, native American, and Asian students comprise 43 percent of TUDSD's students.

Despite the fiscal constraints imposed by severely limited resources, TUSD is known for its innovative bilingual education programs. Showing just how much America's classrooms have changed since most Members of the Senate went to school, TUSD's officials and educators must strive to meet the educational needs of a student body that speaks a total of 70 different languages.

At a time when record numbers of language minority students are entering America's classrooms, and 5 million children of immigrants are expected to enroll in our schools during this decade, it is imperative that the Congress act to address their unique educational needs. The joint efforts of local, State, and Federal Governments are necessary to serve children from families where English is not the primary language.

While America's LEP population continues to surge, the resources allocated to help educate these students remain alarmingly insufficient. The Congressional Research Service [CRS] reports that when adjusted for inflation, funding for programs under the Bilingual Education Act decreased 47 percent over the last decade. Statistics also show that less than 10 percent of students eligible for Federal bilingual education services of title 7 receive them.

A Department of Education forum on the staffing resources necessary to meet the needs of schools with language-minority students supplied concrete evidence of a critical shortage of bilingual teachers, teacher aides, and counselors across the United States. In the last 2 fiscal years, only one out of every seven school districts in the United States seeking funds for family English literacy, special population, and staff training grants received them.

The current shortage of resources and personnel so urgently needed by our LEP students has profound consequences for both their individual dreams and aspirations, as well as the future vitality and competitiveness of our Nation.

Students from a non-English-speaking background often face a plethora of economic and cultural disadvantages in struggling to succeed in America's schools and work force. A look at current educational achievement indicators vividly demonstrates why this amendment is necessary to help bolster success in school for language minority students.

Hispanic students comprise approximately three-fourths of all language-minority students. Nationwide, the percentage of Hispanics that are held back a grade is almost twice as high as that of Anglo students.

The first report card of the National Education Goals Panel reported that Hispanic students have substantially higher dropout rates than white or black students, and that limited English proficiency is a factor. At age 20, only 60 percent of Hispanics have a high school diploma, or its equivalency. This compares poorly with the 83-percent graduation rate for white students.

As charted by the National Education Goals panel, it should be of great concern to every Member of this body that the high dropout rate for Hispanic students has shown scarce improvement over the last 15 years. The plight of native American and Native Alaskan students as shown by such indicators is similar, if not worse.

Three of the national education goals that we seek to attain by the year 2000 pose special challenges for our fellow citizens who come from a non-English-speaking background. In my view, these are ensuring that all children enter school ready to learn; a national high school graduation rate of 90 percent, and full literacy for every adult American. If we are to seriously pursue these laudable goals, as I believe we must, each school district, every community, and all levels of government have to join forces to better serve the educational needs of language minority students.

Mr. President, I believe the Senate has helped in an important manner by accepting my amendment. The legislation before us authorizes a huge sum of new funds for education reform at the local level—$850 million, and it wisely allows schools and communities to design their own school improvement programs.

We have improved this bill with this amendment. By requiring that each school that develops an improvement plan take a close look at how their plan meets the needs of language minority students, the Senate can help protect these students from further falling through the cracks of our education system.

My amendment merely requires that schools seeking new Federal aid for school reform describe the plan's impact on LEP students.

This amendment does not burden applicants with directives on what reforms they should select, or how they should be implemented. It also has no additional costs for taxpayers.

My overriding intent is to ensure that the special needs of LEP and disabled students are addressed in whatever type of reforms local communities develop under S. 2.

I know that each Member of the Senate is committed to furthering the cause of educational excellence in America. For the students who come to our schools without many of the advantages that most Americans take for granted, the adoption of this amendment is a small but important step in their individual journeys to success in school and beyond.

I would like to thank Senators KENNEDY, HATCH, and KASSEBAUM for their key support in accepting my amendment. I yield the floor.

Mr. PELL. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The point of no quorum having been made, the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

CABLE TELEVISION CONSUMER PROTECTION ACT

The PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of S. 12, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 12) to amend title VI of the Communications Act of 1934 to ensure carriage on cable television of local news and other programming and to restore the right of local regulatory authorities to regulate cable television rates, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Cable Television Consumer Protection Act of 1991".

FINDINGS

SEC. 2. The Congress finds and declares the following:

(1) Pursuant to the Cable Communications Policy Act of 1984, rates for cable television services have been deregulated in approximately 97 percent of all franchises since December 29, 1986. Since rate deregulation, monthly rates for the lowest priced basic cable service have increased by 40 percent or more for 28 percent of cable television subscribers. Although the average number of basic channels has increased from about 24 to 30, average monthly rates have increased by 29 percent during the same period. The average monthly cable rate has increased almost three times as much as the Consumer Price Index since rate deregulation.

(2) For a variety of reasons, including local franchising requirements and the extraordinary expense of constructing more than one cable television system to serve a particular geographic area, most cable television subscribers have no opportunity to select between competing cable systems. Without a sufficient number of local television broadcast signals and without the presence of another multichannel video programming distributor, a cable system faces no local competition. The result is undue market power for the cable operator as compared to that of consumers and video programmers.

(3) There is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media.

(4) There has been a substantial increase in the penetration of cable television systems over the past decade, with cable television services now available to 71.3 million of the 92.1 million households with televisions. Nearly 54 million households, over 58 percent of the households with televisions, subscribe to cable television, and this percentage is almost certain to increase. As a result of this growth, the cable television industry has become a dominant nationwide video medium.

(5) The cable industry has become highly concentrated. The potential effects of such concentration are barriers to entry for new programmers and a reduction in the number of media voices available to consumers.

(6) Cable television rates for video programming provided on other than the basic service tier should not be governmentally regulated except in extraordinary circumstances, which may include the need to control undue market power.

(7) The cable television industry has become vertically integrated; cable operators and cable programmers often have common ownership. As a result, cable operators have the incentive and ability to favor their affiliated programmers. This could make it more difficult for non-cable-affiliated programmers to secure carriage on cable systems. Vertically integrated program suppliers also have the incentive and ability to favor their affiliated cable operators over non-affiliated cable operators and programming distributors using other technologies.

(8) There is a substantial governmental and First Amendment interest in ensuring that cable subscribers have access to local noncommercial educational stations which Congress has authorized, as expressed in section 396(a)(5) of the Communications Act of 1934 (47 U.S.C. 396(a)(5)). The distribution of unique noncommercial, educational programming services, including those transmitted by noncommercial educational television stations serving local communities or markets, advances that interest in providing for the further education of our citizens and encouraging "public telecommunications services which will be responsive to the interests of people both in particular localities and throughout the United States, which will constitute an expression of diversity and excellence, and which will constitute a source of alternative telecommunications services for all the citizens of the Nation".

(9) The Federal Government has a substantial interest in making all nonduplicative local public television services available on cable systems because—

(A) public television provides educational and informational programming to the Nation's citizens, thereby advancing the Government's compelling interest in educating its citizens;

(B) public television is a local community institution, supported through local tax dollars and voluntary citizen contributions in excess of $10,800,000,000 since 1972, that provides public service programming that is responsive to the needs and interests of the local community;

(C) the Federal Government, in recognition of public television's integral role in serving the educational and informational needs of local communities, has invested more than $3,000,000,000 in public broadcasting since 1969; and

(D) absent carriage requirements there is a substantial likelihood that citizens, who have supported local public television services, will be deprived of those services.

(10) A primary objective and benefit of our Nation's system of regulation of television and radio broadcasting is the local origination of programming. There is a substantial governmental interest in ensuring its continuation.

(11) Broadcast television stations continue to be an important source of local news and public affairs programming and other local broadcast services critical to an informed electorate.

(12) Broadcast television programming is supported by revenues generated from advertising broadcast over stations. Such programming is otherwise free to those who own television sets and do not require cable transmission to receive broadcast signals. There is a substantial governmental interest in promoting the continued availability of such free television programming, especially for viewers who are unable to afford other means of receiving programming.

(13) As a result of the growth of cable television, there has been a marked shift in market share from broadcast television to cable television services.

(14) Cable television systems and broadcast television stations increasingly compete for television advertising revenues. As the proportion of households subscribing to cable television increases, proportionately more advertising revenues will be reallocated from broadcast to cable television systems.

(15) A cable television system which carries the signal of a local television broadcaster is assisting the broadcaster to increase its viewership, and thereby attract additional advertising revenues that otherwise might be earned by the cable system operator. As a result, there is an economic incentive for cable systems to terminate the retransmission of the broadcast signal, refuse to carry new signals, or reposition a broadcast signal to a disadvantageous channel position. There is a substantial likelihood that absent the reimposition of such a requirement, additional local broadcast signals will be deleted, repositioned, or not carried.

(16) As a result of the economic incentive that cable systems have to delete, reposition, or not carry local broadcast signals, coupled with the absence of a requirement that such systems carry local broadcast signals, the economic viability of free local broadcast television and its ability to originate quality local programming will be seriously jeopardized.

(17) Consumers who subscribe to cable television often do so to obtain local broadcast signals which they otherwise would be not be able to receive, or to obtain improved signals. Most subscribers to cable television systems do not or cannot maintain antennas to receive broadcast television services, do not have input selector switches to convert from a cable to antenna reception system, or cannot otherwise receive broadcast television services. The regulatory system created by the Cable Communications Policy Act of 1984 was premised upon the continued existence of mandatory carriage obligations for cable systems, ensuring that local stations would be protected from anticompetitive conduct by cable systems.

(18) Cable television systems often are the single most efficient distribution system for television programming. A government mandate for a substantial societal investment in alternative distribution systems for cable subscribers, such as the "A/B" input selector antenna system, is not an enduring or feasible method of distribution and is not in the public interest.

(19) At the same time, broadcast programming that is carried remains the most popular programming on cable systems, and a substantial portion of the benefits for which consumers pay cable systems is derived from carriage of the signals of network affiliates, independent television stations, and public television stations. Also, cable programming placed on channels adjacent to popular off-the-air signals obtains a larger audience than on other channel positions. Cable systems, therefore, obtain great benefits from local broadcast signals which, until now, they have been able to obtain without the consent of the broadcaster or any copyright liability. This has resulted in an effective subsidy of the development of cable systems by local broadcasters. While at one time, when cable systems did not attempt to compete with local broadcasters for programming, audience, and advertising, this subsidy may have been appropriate, it is so no longer and results in a competitive imbalance between the two industries.

(20) The Cable Communications Policy Act of 1984, in its amendments to the Communications Act of 1934, limited the regulatory authority of franchising authorities over cable operators. Franchising authorities are finding it difficult under the current regulatory scheme to deny renewals to cable systems that are not adequately serving cable subscribers.

(21) Given the lack of clear guidelines in applying the First Amendment to cable franchise decisions, cities are unreasonably exposed to liability for monetary damages under the Civil Rights Acts.

(22) Cable systems should be encouraged to carry low power television stations licensed to the communities served by those systems where the low power station creates and broadcasts, as a substantial part of its programming day, local programming.

STATEMENT OF POLICY

SEC. 3. It is the policy of the Congress in this Act to—

(1) promote the availability to the public of a diversity of views and information through cable television and other video distribution media;

(2) rely on the marketplace, to the maximum extent feasible, to achieve that availability;

(3) ensure that cable operators continue to expand, where economically justified, their capacity and the programs offered over their cable systems;

(4) where cable television systems are not subject to effective competition, ensure that consumer interests are protected in receipt of cable service; and

(5) ensure that cable television operators do not have undue market power vis-a-vis video programmers and consumers.

DEFINITIONS

SEC. 4. (a) Section 602 of the Communications Act of 1934 (47 U.S.C. 522) is amended by redesignating paragraph (1) as paragraph (2), by redesignating paragraphs (2) and (3) as paragraphs (4) and (5), respectively, by redesignating paragraphs (4) through (10) as paragraphs (7) through (13), respectively, by redesignating paragraphs (11) and (12) as paragraphs (16) and (17), respectively, by redesignating paragraph (13) as paragraph (19), by redesignating paragraphs (14) and (15) as paragraphs (23) and (24), respectively, and by redesignating paragraph (16) as paragraph (27).

(b) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended by inserting immediately before paragraph (2), as so redesignated, the following new paragraph:

"(1) the term 'activated channels' means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use;".

(c) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended by inserting immediately after paragraph (2), as so redesignated, the following new paragraph:

"(3) the term 'available to a household' or 'available to a home' when used in reference to a multichannel video programming distributor means a particular household which is a subscriber or customer of the distributor or a particular household which is actively and currently sought as a subscriber or customer by a multichannel video programming distributor;".

(d) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended by inserting immediately after paragraph (5), as so redesignated, the following new paragraph:

"(6) the term 'cable community' means the households in the geographic area in which a cable system provides cable service;".

(e) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended by inserting immediately after paragraph (13), as so redesignated, the following new paragraphs:

"(14) the term 'headend' means the location of any equipment of a cable system used to process the signals of television broadcast stations for redistribution to subscribers;

"(15) the term 'multichannel video programming distributor' means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming;".

(f) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended by inserting immediately after paragraph (17), as so redesignated, the following new paragraph:

"(18) the term 'principal headend' means—

"(A) the headend, in the case of a cable system with a single headend, or

"(B) in the case of a cable system with more than one headend, the headend designated by the cable operator to the Commission as the principal headend, except that such designation shall not undermine or evade the requirements of section 614;".

(g) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended by inserting immediately after paragraph (19), as so redesignated, the following new paragraphs:

"(20)(A) the term 'local commercial television station' means any television broadcast station, determined by the Commission to be a commercial station, licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system—

"(i) is licensed to a community whose reference point, as defined in section 76.53 of title 47, Code of Federal Regulations, or any successor regulations thereto, is within 50 miles of the principal headend of the cable system; and

"(ii) delivers to the principal headend of the cable system either a signal level of −45 dBm for UHF signals and −49 dBm for VHF signals at the input terminals of the signal processing equipment, or a baseband video signal;

where such a television broadcast station would be considered a distant signal under section 111 of title 17, United States Code, it shall be deemed to be a local commercial television station upon agreement to reimburse the cable operator for the incremental copyright costs assessed against such operator as a result of being carried on the cable system;

"(B) the term 'local commercial television station' shall not include television translator stations and other passive repeaters which operate pursuant to part 74 of title 47, Code of Federal Regulations, or any successor regulations thereto;

"(21) the term 'qualified noncommercial educational television station' means any television broadcast station which—

"(A)(i) under the rules and regulations of the Commission in effect on March 29, 1990, is licensed by the Commission as a noncommercial educational television broadcast station and which is owned and operated by a public agency, nonprofit foundation, corporation, or association; or

"(ii) is owned or operated by a municipality and transmits only noncommercial programs for educational purposes; and

"(B) has as its licensee an entity which is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in section 396(k)(6)(B) (47 U.S.C. 396(k)(6)(B));

such term includes (I) the translator of any noncommercial educational television station with five watts or higher power serving the cable community, (II) a full service station or translator if such station or translator is licensed to a channel reserved for noncommercial educational use pursuant to section 73.606 of title 47, Code of Federal Regulations, or any successor regulations thereto, and (III) such stations and translators operating on channels not so reserved as the Commission determines are qualified as noncommercial educational stations;

"(22) the term 'qualified low power station' means any television broadcast station conforming to the rules established for Low Power Television Stations contained in part 74 of title 47, Code of Federal Regulations, only if—

"(A) such station broadcasts during at least the minimum number of hours of operation required by the Commission for television broadcast stations under part 73 of title 47, Code of Rederal Regulations, and a significant part of their programming, in an amount to be determined by the Commission, is locally originated and produced;

"(B) such station meets all obligations and requirements applicable to television broadcast stations under part 73 of title 47, Code of Federal Regulations, with respect to the broadcast of nonentertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment opportunity;

"(C) such station complies with interference regulations consistent with their secondary status pursuant to part 74 of title 47, Code of Federal Regulations; and

"(D) such station is located no more than 35 miles from the cable system's headend, or no more than 20 miles if the low power station is located within one of the 50 largest Standard Metropolitan Statistical Areas, and delivers to the input terminals of the signal processing equipment at the cable system headend a signal level of −45 dBm for UHF stations and −49 dBm for VHF stations;

nothing in this paragraph shall be construed to grant any low power station primary status for spectrum occupancy;"

(h) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended—

(1) by striking "and" at the end of paragraph (24), as so redesignated; and

(2) by inserting immediately after such paragraph (24) the following new paragraphs:

"(25) the term 'usable activated channels' means activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the Commission;

"(26) the term 'video programmer' means a person engaged in the production, creation, or wholesale distribution of a video programming service for sale; and".

REGULATION OF CABLE RATES

SEC. 5. Section 623 of the Communications Act of 1934 (47 U.S.C. 543) is amended to read as follows:

"REGULATION OF RATES

"SEC. 623. (a) Any Federal agency, State, or franchising authority may not regulate the rates for the provision of cable service, or for the installation or rental of equipment used for the receipt of cable service, except to the extent provided under this section and section 612. Any franchising authority may regulate the rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers, by only to the extent provided under this section.

"(b)(1) If the Commission finds that a cable system is not subject to effective competition, the Commission shall ensure that the rates for the provision of basic cable service, including for the installation or rental of equipment used for the receipt of basic cable service, or charges for changes in service tiers, are reasonable; except that if fewer than 30 percent of all customers to that cable system subscribe only to basic cable service, the Commission also shall ensure that rates are reasonable for the lowest-priced tier of service subscribed to by at least 30 percent of the cable system's customers.

"(2)(A) Upon written request by a franchising authority, the Commission shall review the State and local laws and regulations governing the regulation of rates of cable systems under the jurisdiction of such franchising authority. The Commission shall authorize such franchising authority to carry out such regulation pursuant to paragraph (1) in lieu of the Commission if the Commission finds that—

"(i) such State and local laws and regulations conform to the procedures, standards, requirements, and guidelines prescribed under paragraph (4) and any interpretative rulings, decisions, and orders of the Commission that relate to rate regulation under this subsection; and

"(ii) such franchising authority will provide the level of protection to consumers required by the Commission and that carries out the national policy established in this title.

"(B) Upon petition by a cable operator or other interested party, the Commission shall review such regulation of cable system rates by a franchising authority authorized under this paragraph. If the Commission finds that the franchising authority has acted inconsistently with the requirements in subparagraph (A), the Commission shall grant appropriate relief. If the Commission, after the franchising authority has had a reasonable opportunity to comment, determines that the State and local laws and regulations are not in conformance with subparagraph (A) (i) or (ii), the Commission shall revoke such authorization.

"(3) A cable operator may add to or delete from a basic cable service tier any video programming other than retransmitted local television broadcast signals. Any obligation imposed by operation of law inconsistent with this subsection is preempted and may not be enforced.

"(4) Within 120 days after the date of enactment of the Cable Television Consumer Protection Act of 1991, the Commission shall prescribe by rule procedures, standards, requirements, and guidelines for the establishment of reasonable rates charged for basic cable service by a cable operator not subject to effective competition.

"(5) A cable operator may file with the Commission, or with a franchising authority authorized by the Commission under paragraph (2) to regulate rates, a request for a rate increase in the price of a basic cable service tier. Any such request upon which final action is not taken within 180 days after such request shall be deemed granted.

"(c)(1) When a franchising authority or a subscriber of any cable system found by the Commission not to be subject to effective competition files, within a reasonable time after a rate increase for cable programming service of that system, including an increase which results from a change in that system's service tiers or from a change in the per channel rate paid by subscribers for a particular video programming service, a complaint which establishes a prima facie case that rates for such cable programming service are unreasonable based on the criteria established by the Commission, the Commission shall determine whether such rates for cable programming service are unreasonable. In making its determination, the Commission shall inquire of the cable operator of such system as to the reasons for such rates. If the Commission finds that such rates cannot be justified under reasonable business practices, the Commission shall establish reasonable rates.

"(2) Within 180 days after the date of enactment of the Cable Television Consumer Protection Act of 1991, the Commission shall prescribe by rule—

"(A) the criteria for determining whether rates for cable programming service are unreasonable, and

"(B) criteria for determining that (i) a complaint described under paragraph (1) is filed within a reasonable period after a rate increase and (ii) the complaint establishes a prima facie case that rates for cable programming service are unreasonable.

"(3) In establishing the criteria for determining whether rates for cable programming service are unreasonable pursuant to paragraph (2)(A), the Commission shall consider, among other factors—

"(A) the extent to which service offerings are offered on an unbundled basis;

"(B) rates for similarly situated cable systems offering comparable services, taking into account, among other factors, similarities in facilities, regulatory and governmental costs, and number of subscribers;

"(C) the history of rates for such service offerings of the system;

"(D) the rates for all cable programming service offerings taken as a whole; and

"(E) the rates for such service offerings charged by cable systems subject to effective competition, as defined in subsection (d).

"(d) Under this section, a cable system shall be presumed to be subject to effective competition if—

"(1) fewer than 30 percent of the households in the cable community subscribe to the cable service of such cable system; or

"(2) the cable community is served by a sufficient number of local television broadcast signals and by more than one multichannel video programming distributor.

For purposes of paragraph (2), a cable community shall be considered as served by more than one multichannel video programming distributor if (A) comparable video programming is available at comparable rates to at least a majority of the households in the cable community from a competing cable operator, multichannel multipoint distribution service, direct broadcast satellite program distributor, television receive-only satellite program distributor, or other competing multichannel video programming distributor, and (B) the number of households subscribing to programming services offered by such competing multichannel video programming distributor, or by a combination of such distributors, is in the aggregate at least 15 percent of the households in the cable community. No competing multichannel video programming distributor serving households in a cable community which, directly or indirectly, is owned or controlled by, or affiliated through substantial common ownership with, the cable system in that cable community, shall be included in any determination regarding effective competition under this subsection.

"(e) A cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system.

"(f) Nothing in this title shall be construed as forbidding any Federal agency, State, or franchising authority from—

"(1) prohibiting discrimination among customers of cable service; or

"(2) requiring and regulating the installation or rental of equipment which facilitates the reception of cable service by hearing-impaired individuals.

"(g) For purposes of this section, the term 'cable programming service' means all video programming services, including installation or rental of equipment not used for the receipt of basic cable service, regardless of service tier, offered over a cable system except basic cable service and those services offered on a per channel or per program basis.

"(h) Within 120 days of enactment of this subsection, the Commission shall, by regulation, establish standards, guidelines, and procedures to prevent evasions of the rates, services, and other requirements of this section.".

NONDISCRIMINATION WITH RESPECT TO VIDEO PROGRAMMING

SEC. 6. Part IV of title VI of the Communications Act of 1934 (47 U.S.C. 551 et seq.) is amended by adding at the end the following new sections:

"NONDISCRIMINATION WITH RESPECT TO VIDEO PROGRAMMING

"SEC. 640. (a) A video programmer in which a cable operator has an attributable interest and who licenses video programming for national or regional distribution—

"(1) shall not unreasonably refuse to deal with any multichannel video programming distributor;

"(2) shall not discriminate in the price, terms, and conditions in the sale of the video programmer's programming among cable systems, cable operators, or other multichannel video programming distributors if such action would have the effect of impeding retail competition.

"(b) A video programmer in which a cable operator has an attributable interest and who licenses video programming for national or regional distribution shall make programming available on similar price, terms, and conditions to all cable systems, cable operators, or their agents or buying groups; except that such video programmer may—

"(1) impose reasonable requirements for creditworthiness, offering of service, and financial stability;

"(2) establish different price, terms, and conditions to take into account differences in cost in the creation, sale, delivery, or transmission of video programming;

"(3) establish price, terms, and conditions which take into account economies of scale or other cost savings reasonably attributable to the number of subscribers served by the distributor; and

"(4) permit price differentials which are made in good faith to meet the equally low price of a competitor.

"(c) The Commission shall prescribe rules and regulations to implement this section. The Commission's rules shall—

"(1) provide for an expedited review of any complaints made pursuant to this section; and

"(2) provide for penalties to be assessed against any person filing a frivolous complaint pursuant to this section.

"(d) Any person who encrypts any satellite cable programming for private viewing shall make such programming available for private viewing by C-band receive-only home satellite antenna users.

"(e) This section shall not apply to the signal of an affiliate of a national television broadcast network or other television broadcast signal that is retransmitted by satellite and shall not apply to any internal satellite communication of any broadcaster, broadcast network, or cable network.

"(f) For purposes of this section, any video programmer who licenses video programming for distribution to more than one cable community shall be considered a regional distributor of video programming. Nothing contained in this section shall require any person who licenses video programming for national or regional distribution to make such programming available in any geographic area beyond which such programming has been authorized or licensed for distribution.

"NONDISCRIMINATION WITH RESPECT TO SATELLITE CARRIERS

"SEC. 641. A satellite carrier that provides service pursuant to section 119 of title 17, United States Code—

"(1) shall not unreasonably refuse to deal with any distributor of video programming in the provision of such service to home satellite earth stations qualified to receive such service under section 119 of title 17, United States Code; and

"(2) shall not discriminate in the price, terms, and conditions of the sale of such service among distributors to home satellite earth stations qualified to receive such signals under section 119 of title 17, United States Code, or between such distributors and other multichannel video programming distributors.

"AGREEMENTS BETWEEN CABLE OPERATORS AND VIDEO PROGRAMMERS

"SEC. 642. Within one year after the date of enactment of this section, the Commission shall establish regulations governing program carriage agreements and related practices between cable operators and video programmers. Such regulations shall—

"(1) include provisions designed to prevent a cable operator or other multichannel video programming distributor from requiring a financial interest in a program service as a condition for carriage on one or more of such operator's systems;

"(2) include provisions designed to prohibit a cable operator or other multichannel video programming distributor from coercing a video programmer to provide exclusive rights against other multichannel video programming distributors as a condition of carriage on a system;

"(3) contain provisions designed to prevent a multichannel video programming distributor from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programmer to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation in the selection, terms, or conditions for carriage of video programmers;

"(4) provide for expedited review of any complaints made by a video programmer pursuant to this section;

"(5) provide for appropriate penalties and remedies for violations of this subsection, including carriage; and

"(6) provide penalties to be assessed against any person filing a frivolous complaint pursuant to this section.".

LEASED COMMERCIAL ACCESS

SEC. 7. (a) Section 612(a) of the Communications Act of 1934 (47 U.S.C. 532(a)) is amended by inserting "to promote competition in the delivery of diverse sources of video programming and" immediately after "purpose of this section is".

(b) Section 612(c) of the Communications Act of 1934 (47 U.S.C. 532(c)) is amended—

(1) in paragraph (1) by inserting "and with rules prescribed by the Commission under paragraph (4)" immediately after "purpose of this section"; and

(2) by adding at the end the following new paragraph:

"(4)(A) The Commission shall have the authority to—

"(i) determine the maximum reasonable rates that a cable operator may establish pursuant to paragraph (1) for commercial use of designated channel capacity, including the rate charged for the billing of rates to subscribers and for the collection of revenue from subscribers by the cable operator for such use; and

"(ii) establish reasonable terms and conditions for such use, including those for billing and collection.

"(B) Within 180 days after the date of enactment of this paragraph, the Commission shall establish rules for determining the maximum reasonable rate under subparagraph (A)(i) and for establishing terms and conditions under subparagraph (A)(ii).".

(c) Paragraph (5) of section 612(b) of the Communications Act of 1934 (47 U.S.C. 532(b)) is amended to read as follows:

"(5) For the purposes of this section, the term 'commercial use' means the provision of video programming, whether or not for profit.".

LIMITATIONS ON CONTROL AND UTILIZATION

SEC. 8. Subsection (f) of section 613 of the Communications Act of 1934 (47 U.S.C. 533) is amended to read as follows:

"(f)(1) In order to enhance effective competition, the Commission shall, within one year after the date of enactment of the Cable Television Consumer Protection Act of 1991, conduct a rulemaking proceeding to prescribe rules and regulations establishing—

"(A) reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such person, or in which such person has an attributable interest; and

"(B) reasonable limits on the number of channels on a cable system that can be occupied by a video programmer in which a cable operator has an attributable interest.

"(2) In prescribing rules and regulations under paragraph (1), the Commission shall, among other public interest objectives—

"(A) ensure that no cable operator or group of cable operators can unfairly impede, either because of the size of any individual operator or because of joint actions by a group of operators of sufficient size, the flow of video programming from the video programmer to the consumer;

"(B) ensure that cable operators affiliated with video programmers do not favor such programmers in determining carriage on their cable systems or do not unreasonably restrict the flow of such programming to other video distributors;

"(C) take particular account of the market structure, ownership patterns, and other relationships of the cable television industry, including the nature and market power of the local franchise, the joint ownership of cable systems and video programmers, and the various types of non-equity controlling interests;

"(D) account for any efficiencies and other benefits that might be gained through increased ownership or control;

"(E) make such rules and regulations reflect the dynamic nature of the communications marketplace;

"(F) not impose limitations which would bar cable operators from serving previously unserved rural areas; and

"(G) not impose limitations which would impair the development of diverse and high quality video programming.".

CROSS-OWNERSHIP

SEC. 9. (a) Section 613(a) of the Communications Act of 1934 (47 U.S.C. 533(a)) is amended—

(1) by inserting "(1)" immediately after "(a)"; and

(2) by adding at the end the following new paragraph:

"(2) It shall be unlawful for a cable operator to hold a license for multichannel multipoint distribution service, or to offer satellite master antenna television service separate and apart from any franchised cable service, in any portion of the cable community served by that cable operator's cable system. The Commission—

"(A) shall waive the requirements of this paragraph for all existing multichannel multipoint distribution services and satellite master antenna television services which are owned by a cable operator on the date of enactment of this paragraph; and

"(B) may waive the requirements of this paragraph to the extent the Commission determines is necessary to ensure that all significant portions of the affected cable community are able to obtain video programming.".

(b) Section 613(c) of the Communications Act of 1934 (47 U.S.C. 533(c)) is amended—

(1) by inserting "(1)" immediately after "(c)"; and

(2) by adding at the end the following new paragraph:

"(2) If ten percent of the households in the United States with television sets subscribe to service provided by multichannel video programming distributors directly via satellite to home satellite antennas, the Commission shall promulgate appropriate regulations (A) limiting ownership of any such distributor by cable operators or any person having other media interests and (B) requiring access to such satellite service by unaffiliated video programmers.".

CUSTOMER SERVICE

SEC. 10. (a) Section 632(a) of the Communications Act of 1934 (47 U.S.C. 552(a)) is amended by inserting "may establish and" immediately after "authority" and in paragraph (1) by inserting immediately after "operator" the following: "that (A) subject to the provisions of subsection (e), exceed the standards set by the Commission under this section, or (B) prior to the issuance by the Commission of rules pursuant to subsection (d)(1), exist on the date of enactment of the Cable Television Consumer Protection Act of 1991".

(b) Section 632 of the Communications Act of 1934 (47 U.S.C. 552) is amended by adding at the end the following new subsections:

"(d)(1) The Commission, within 180 days after the date of enactment of this subsection, shall, after notice and an opportunity for comment, issue rules that establish customer service standards that ensure that all customers are fairly served. Thereafter the Commission shall regularly review the standards and make such modifications as may be necessary to ensure that customers of the cable industry are fairly served. A franchising authority may enforce the standards established by the Commission.

"(2) Notwithstanding the provisions of subsection (a) and this subsection, nothing in this title shall be construed to prevent the enforcement of—

"(A) any municipal ordinance or agreement in effect on the date of enactment of this subsection, or

"(B) any State law,

concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section.

"(e) In the event that a particular franchising authority, pursuant to its authority under subsection (a), requires provisions for enforcement of customer service requirements of the cable operator that exceed the standards established by the Commission, the cable operator may petition the Commission for a declaration, after notice and hearing and based upon substantial evidence, that the particular franchising authority's requirements are not in the public interest. In determining whether a particular franchising authority's provisions for enforcement of customer service requirements are not in the public interest, the Commission shall consider the needs of the local area served by the particular franchising authority.".

FRANCHISE RENEWAL

SEC. 11. (a) Section 626(a) of the Communications Act of 1934 (47 U.S.C. 546(a)) is amended by adding at the end the following: "Submission of a timely written renewal notice by the cable operator specifically requesting a franchising authority to initiate the formal renewal process under this section is required for the cable operator to invoke the renewal procedures set forth in subsections (a) through (g); except that nothing in this section requires a franchising authority to commence the renewal proceedings during the 6-month period which begins with the 36th month before the franchise expiration.".

(b) Section 626(c)(1) of the Communications Act of 1934 (47 U.S.C. 546(c)(1)) is amended—

(1) by inserting "pursuant to subsection (b)" immediately after "renewal of a franchise"; and

(2) by striking "completion of any proceedings under subsection (a)" and inserting in lieu thereof the following: "date of the submission of the cable operator's proposal pursuant to subsection (b)".

(c) Section 626(c)(1)(A) of the Communications Act of 1934 (47 U.S.C. 546(c)(1)(A)) is amended by inserting "throughout the franchise term" immediately after "law".

(d) Section 626(c)(1)(B) of the Communications Act of 1934 (47 U.S.C. 546(c)(1)(B)) is amended—

(1) by striking "mix, quality, or level" and inserting in lieu thereof "mix or quality"; and

(2) by inserting "throughout the franchise term" immediately after "needs".

(e) Section 626(d) of the Communications Act of 1934 (47 U.S.C. 546(d)) is amended—

(1) by inserting "which has been submitted in compliance with subsection (b)" immediately after "Any denial of a proposal for renewal"; and

(2) by striking all after "unless" and inserting in lieu thereof the following: "the operator has notice and opportunity to cure, or in any case in which it is documented that the franchising authority has waived in writing its right to object.".

(f) Section 626(e)(2)(A) of the Communications Act of 1934 (47 U.S.C. 546(e)(2)(A)) is amended by inserting immediately after "section" the following: "and such failure to comply actually prejudiced the cable operator".

(g) Section 626 of the Communications Act of 1934 (47 U.S.C. 546) is amended by adding at the end the following new subsection:

"(i) Notwithstanding the provisions of subsections (a) through (h), any lawful action to revoke a cable operator's franchise for cause shall not be negated by the initiation of renewal proceedings by the cable operator under this section.".

REQUIREMENT FOR CERTAIN EQUIPMENT ON TELEVISION SETS

SEC. 12. Section 303(s) of the Communications Act of 1934 (47 U.S.C. 303(s)) is amended—

(1) by inserting ", and be equipped with an electronic switch permitting users of the apparatus to change readily among all video distribution media," immediately after "television broadcasting"; and

(2) by inserting immediately before the period at the end the following: ", except that such electronic switch shall be required only if the Commission determines that the installation of the switch is technically and economically feasible".

LIMITATION OF FRANCHISING AUTHORITY LIABILITY

SEC. 13. Part III of title IV of the Communications Act of 1934 (47 U.S.C. 621 et seq.) is amended by adding at the end the following new section:

"LIMITATION OF LIABILITY

"SEC. 628. (a) In any court proceeding pending on the date of enactment of this section, or initiated after such date, involving any claim under the Civil Rights Acts asserting a violation of First Amendment constitutional rights by a franchising authority or other governmental entity or by any official, member, employee, or agent of such authority or entity, arising from actions expressly authorized or required by this title, any relief shall be limited to injunctive relief, declaratory relief, and attorney's fees and legal costs, except as provided in subsection (b).

"(b) The limitation required by subsection (a) shall not apply to actions that, prior to such violation, have been determined by a final order of a court of binding jurisdiction, no longer subject to appeal, to be in violation of constitutional rights under the First Amendment or of the Civil Rights Acts.".

MINIMUM TECHNICAL STANDARDS

SEC. 14. Section 624(e) of the Communications Act of 1934 (47 U.S.C. 544(e)) is amended to read as follows:

"(e)(1) The Commission shall, within one year after the date of enactment of the Cable Television Consumer Protection Act of 1991, establish minimum technical standards to ensure adequate signal quality for all classes of video programming signals provided over a cable system, and thereafter shall periodically update such minimum standards to reflect improvements in technology.

"(2) The Commission may establish standards for technical operation and other signals provided over a cable system including but not limited to high-definition television (HDTV).

"(3) The Commission may require compliance with and enforce any standard established under this subsection, adjusted as appropriate for the particular circumstances of the local cable system and cable community.

"(4) The Commission shall establish procedures for complaints or petitions asserting the failure of a cable operator to meet the technical standards and seeking an order compelling compliance; except that nothing in this subsection shall be construed to limit the ability of a complainant or petitioner to seek any other remedy that may be available under the franchise agreement or State or Federal law or regulation.

"(5) After the establishment of technical standards by the Commission pursuant to this section, neither a State or political subdivision thereof, nor a franchising authority or other governmental entity of a State or political subdivision thereof, shall—

"(A) establish any technical standards described in this subsection;

"(B) enforce any such standards that have not been established by the Commission; or

"(C) enforce any such standards that are inconsistent with the standards established by the Commission.".

RETRANSMISSION CONSENT FOR CABLE SYSTEMS

SEC. 15. (a) Section 325 of the Communications Act of 1934 (47 U.S.C. 325) is amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting immediately after subsection (a) the following new subsection:

"(b)(1) Following the date that is one year after the date of enactment of this section, no cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, without the express authority of the originating station, except as permitted by sections 614 and 615.

"(2) Until December 31, 1994, the provisions of this section shall not apply to retransmission of a signal of a broadcasting station transmitted by a satellite carrier or common carrier which carried that signal on May 1, 1991. For the purposes of this subsection, the term 'satellite carrier' means an entity that uses the facilities of a satellite or satellite service licensed by the Commission to establish and operate a channel of communications for point-to-multipoint distribution of television signals.

"(3)(A) Within 45 days after the date of enactment of this subsection, the Commission shall commence a rulemaking proceeding to establish regulations to govern the exercise by television stations of the rights to grant retransmission authority under this subsection and the right to signal carriage under sections 614 and 615. Such rulemaking proceeding shall be completed within six months after its commencement.

"(B) The regulations required by subparagraph (A) shall require that television stations, within one year after the date of enactment of this subsection and every three years thereafter, make an election between the right to grant retransmission authority under this subsection and the right to signal carriage under sections 614 and 615. Such election shall apply to all cable systems within the jurisdiction of any franchising authority.

"(4) If an originating television station elects under paragraph (3)(B) to exercise its right to grant retransmission authority under this subsection, the provisions of sections 614 and 615 shall not apply to the carriage of the signal of such station by such cable system.

"(5) The election by a local commercial television station to exercise its right to grant retransmission authority under this subsection shall not interfere with or supersede the rights under sections 614 and 615 of any station electing to assert the right to signal carriage under that section.".

REQUIREMENT TO CARRY LOCAL BROADCAST SIGNALS

SEC. 16. Part II of title VI of the Communications Act of 1934 (47 U.S.C. 531 et seq.) is amended by inserting immediately after section 613 the following new sections:

"CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS

"SEC. 614. (a) Each cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations and qualified low power stations as provided by this section. Carriage of additional broadcast television signals on such system shall be at the discretion of such operator, subject to section 325(b).

"(b)(1)(A) A cable operator of a cable system with 12 or fewer usable activated channels shall carry the signals of at least three local commercial television stations, except that if such a system has 300 or fewer subscribers, it shall not be subject to any requirements under this section so long as such system does not delete from carriage by that system any signal of a broadcast television station.

"(B) A cable operator of a cable system with more than 12 usable activated channels shall carry the signals of local commercial television stations, up to a maximum of one-third of the aggregate number of usable activated channels of such system.

"(2) Whenever the number of local commercial television stations exceeds the maximum number of signals a cable system is required to carry under paragraph (1), the cable operator shall have discretion in selecting which such signals shall be carried on its cable system, except that—

"(A) under no circumstances shall a cable operator carry a qualified low power station in lieu of a qualified local commercial broadcast station otherwise entitled to carriage under this section; and

"(B) if the cable operator elects to carry an affiliate of a broadcast network (as such term is defined by the Commission by regulation), such cable operator shall carry the affiliate of such broadcast network whose city of license reference point, as defined under section 76.53 of title 47, Code of Federal Regulations (as in effect on January 1, 1991), or any successor regulation thereto, is closest to the principal headend of the cable system.

"(3)(A) A cable operator shall carry in its entirety, on the cable system of that operator, the primary video and accompanying audio transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval, or on subcarriers. Retransmission of other material in the vertical blanking interval or other nonprogram-related material (including teletext and other subscription and advertiser-supported information services) shall be at the discretion of the cable operator. Where appropriate and feasible, the operator may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the system headend or headends.

"(B) The cable operator shall carry the entirety of the program schedule of any television station carried on the cable system unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under section 76.67 or subpart F of part 76 of title 47, Code of Federal Regulations (as in effect on January 1, 1991), or any successor regulations thereto.

"(4)(A) The signals of local commercial television stations that a cable operator carries shall be carried without material degradation. The Commission shall adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.

"(B) At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.

"(5) Notwithstanding paragraph (1), a cable operator shall not be required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station which is carried on its cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network (as such term is defined by regulation). If a cable operator elects to carry on its cable system a signal which substantially duplicates the signal of another local commercial television station carried on the cable system, or to carry on its system the signals of more than one local commercial television station affiliated with a particular broadcast network, all such signals shall be counted toward the number of signals the operator is required to carry under paragraph (1).

"(6) Each signal carried in fulfillment of carriage obligations of a cable operator under this section shall be carried on the cable system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, at the election of this station, or on such other channel number as is mutually agreed upon by the station and the cable operator. Any disputes regarding the positioning of a local commercial television station shall be resolved by the Commission.

"(7) Signals carried in fulfillment of the requirements of this section shall be provided to every subscriber of a cable system. Such signals shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection. If a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers at reasonable rates.

"(8) A cable operator shall identify, upon request by any person, the signals carried on its system in fulfillment of the requirements of this section.

"(9) A cable operator shall provide written notice to a local commercial television station at least 30 days prior to either deleting from carriage or repositioning that station. No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. The notification provisions of this paragraph shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section.

"(10) A cable operator shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local commercial television stations in fulfillment of the requirements of this section or for the channel positioning rights provided to such stations under this section, except that—

"(A) any such station may be required to bear the costs associated with delivering a good quality signal to the headend of the cable system;

"(B) a cable operator may accept payments from stations which would be considered distant signals under section 111 of title 17, United States Code, as reimbursement for the incremental copyright costs assessed against such cable operator for carriage of such signal; and

"(C) a cable operator may continue to accept monetary payment or other valuable consideration in exchange for carriage or channel positioning of the signal of any local commercial television station carried in fulfillment of the requirements of this section, through, but not beyond, the date of expiration of an agreement thereon between a cable operator and a local commercial television station entered into prior to June 26, 1990.

"(c) If there are not sufficient signals of full power local commercial television stations to fill the channels set aside under subsection (b), the cable operator shall be required to carry qualified low power stations until such channels are filled.

"(d)(1) Whenever a local commercial television station believes that a cable operator has failed to meet its obligations under this section, such station shall notify the operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signals of such station or has otherwise failed to comply with the channel positioning or repositioning requirements of this section. The cable operator shall, within 30 days after such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning requirements of this section. A local commercial television station that is denied carriage or channel positioning or repositioning by a cable operator may obtain review of such denial by filing a complaint with the Commission. Such complaint shall allege the manner in which such cable operator has failed to meet its obligations and the basis for such allegations.

"(2) The Commission shall afford such cable operator an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

"(3) Within 120 days after the date a complaint is filed, the Commission shall determine whether the cable operator has met its obligations under this section. If the Commission determines that the cable operator has failed to meet such obligations, the Commission shall order the cable operator to reposition the complaining station or, in the case of an obligation to carry a station, to commence carriage of the station and to continue such carriage for at least 12 months. If the Commission determines that the cable operator has fully met the requirements of this section, it shall dismiss the complaint.

"(e) No cable operator shall be required—

"(1) to provide or make available any input selector switch as defined in section 76.5(mm) of title 47, Code of Federal Regulations, or any comparable device, or

"(2) to provide information to subscribers about input selector switches or comparable devices.

"(f) Within 180 days after the date of enactment of this section, the Commission shall, following a rulemaking proceeding, issue regulations implementing the requirements imposed by this section.

"CARRIAGE OF NONCOMMERCIAL EDUCATIONAL TELEVISION SIGNALS

"SEC. 615. (a) In addition to the carriage requirements set forth in section 614, each operator of a cable system (hereafter in this section referred to as an 'operator') shall carry the signals of qualified noncommercial educational television stations in accordance with the provisions of this section.

"(b)(1) Subject to paragraphs (2) and (3) and subsection (e), each operator shall carry, on the cable system of that operator, each qualified local noncommercial educational television station requesting carriage.

"(2)(A) Notwithstanding paragraph (1), an operator of a cable system with 12 or fewer usable activated channels shall be required to carry the signal of only one qualified local noncommercial educational television station; except that an operator of such a system shall comply with subsection (c) and may, in its discretion, carry the signals of other qualified noncommercial educational television stations.

"(B) In the case of a cable system described in subparagraph (A) which operates beyond the presence of any qualified local noncommercial educational television station—

"(i) the operator shall carry on that system the signal of one qualified noncommercial educational television station;

"(ii) the selection for carriage of such a signal shall be at the election of the operator; and

"(iii) in order to satisfy the requirements for carriage specified in this subsection, the operator of the system shall not be required to remove any other programming service actually provided to subscribers on March 29, 1990; except that such operator shall use the first channel available to satisfy the requirements of this subparagraph.

"(3)(A) Subject to subsection (c), an operator of a cable system with 13 to 36 usable activated channels—

"(i) shall carry the signal of at least one qualified local noncommercial educational television station but shall not be required to carry the signals of more than three such stations, and

"(ii) may, in its discretion, carry additional such stations.

"(B) In the case of a cable system described in this paragraph which operates beyond the presence of any qualified local noncommercial educational television station, the operator shall import the signal of at least one qualified noncommercial educational station to comply with subparagraph (A)(i).

"(C) The operator of a cable system described in this paragraph which carries the signal of a qualified local noncommercial educational station affiliated with a State public television network shall not be required to carry the signal of any additional qualified local noncommercial educational television station affiliated with the same network if the programming of such additional station is substantially duplicated by the programming of the qualified local noncommercial educational television station receiving carriage.

"(D) An operator of a system described in subparagraph (A) which increases the usable activated channel capacity of the system to more than 36 channels on or after March 29, 1990 shall, in accordance with the other provisions of this section, carry the signal of each qualified local noncommercial educational television station requesting carriage, subject to subsection (e).

"(c) Notwithstanding any other provision of this section, all operators shall continue to provide carriage to all qualified local noncommercial educational television stations whose signals were carried on their systems as of March 29, 1990. The requirements of this subsection may be waived with respect to a particular operator and a particular such station, upon the written consent of the operator and the station.

"(d) An operator required to add the signals of qualified local noncommercial educational television stations to a cable system under this section may do so by placing such additional stations on public, educational, or governmental channels not in use for their designated purposes.

"(e) An operator of a cable system with a capacity of more than 36 usable activated channels which is required to carry the signals of three qualified local noncommercial educational television stations shall not be required to carry the signals of additional such stations the programming of which substantially duplicates the programming broadcast by another qualified local noncommercial educational television station requesting carriage. Substantial duplication shall be defined by the Commission in a manner that promotes access to distinctive noncommercial educational television services.

"(f) A qualified local noncommercial educational television station whose signal is carried by an operator shall not assert any network non-duplication rights it may have pursuant to section 76.92 of title 47, Code of Federal Regulations, to require the deletion of programs aired on other qualified local noncommercial educational television stations whose signals are carried by that operator.

"(g)(1) An operator shall retransmit in its entirety the primary video and accompanying audio transmission of each qualified local noncommercial educational television station whose signal is carried on the cable system, and, to the extent technically feasible, program-related material carried in the vertical blanking interval, or on subcarriers, that may be necessary for receipt of programming by handicapped persons or for educational or language purposes. Retransmission of other material in the vertical blanking interval or on subcarriers shall be within the discretion of the operator.

"(2) An operator shall provide each qualified local noncommercial educational television station whose signal is carried in accordance with this section, with bandwidth and technical capacity equivalent to that provided to commercial television broadcast stations carried on the cable system and shall carry the signal of each qualified local noncommercial educational television station without material degradation.

"(3) The signal of a qualified local noncommercial educational television station shall not be repositioned by an operator unless the operator, at least 30 days in advance of such repositioning, has provided written notice to the station and all subscribers of the cable system. For purposes of this paragraph, repositioning includes (A) assignment of a qualified local noncommercial educational television station to a cable system channel number different from the cable system channel number to which the station was assigned as of March 29, 1990, and (B) deletion of the station from the cable system.

"(4) Notwithstanding the other provisions of this section, an operator shall not be required to carry the signal of any qualified local noncommercial educational television station which does not deliver to the cable system's principal headend a signal of good quality, as may be defined by the Commission.

"(h) Signals carried in fulfillment of the carriage obligations of an operator under this section shall be available to every subscriber as part of the cable system's lowest priced service that includes the retransmission of local television broadcast signals.

"(i)(1) An operator shall not accept monetary payment or other valuable consideration in exchange for carriage of the signal of any qualified local noncommercial educational television station carried in fulfillment of the requirements of this section, except that such a station may be required to bear the cost associated with delivering a good quality signal to the principal headend of the cable system.

"(2) Notwithstanding the provisions of this section, an operator shall not be required to add the signal of a qualified local noncommercial educational television station not already carried under the provisions of subsection (c), where such signal would be considered as a distant signal for copyright purposes unless such station reimburses the operator for the incremental copyright costs assessed against such operator as a result of such carriage.

"(j)(1) Whenever a qualified local noncommercial educational television station believes that an operator of a cable system has failed to comply with the signal carriage requirements of this section, the station may file a complaint with the Commission. Such complaint shall allege the manner in which such operator has failed to comply with such requirements and state the basis for such allegations.

"(2) The Commission shall afford such operator an opportunity to present data, views, and arguments to establish that the operator has complied with the signal carriage requirements of this section.

"(3) Within 120 days after the date a complaint is filed under this subsection, the Commission shall determine whether the operator has complied with the requirements of this section. If the Commission determines that the operator has failed to comply with such requirements, the Commission shall state with particularity the basis for such findings and order the operator to take such remedial action as is necessary to meet such requirements. If the Commission determines that the operator has fully complied with such requirements, the Commission shall dismiss the complaint.

"(k) An operator shall identify, upon request by any person, those signals carried in fulfillment of the requirements of this section.

"(l) For purposes of this section, 'qualified local noncommercial educational television station' is defined as a qualified noncommercial educational television station—

"(A) which is licensed to a principal community whose reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (as in effect on March 29, 1990), or any successor regulations thereto, is within 50 miles of the principal headend of the cable system; or

"(B) whose Grade B service contour, as defined in section 73.683(a) of such title (as in effect on March 29, 1990), or any successor regulations thereto, encompasses the principal headend of the cable system.".

JUDICIAL REVIEW

SEC. 17. Section 635 of the Communications Act of 1934 (47 U.S.C. 555) is amended by adding at the end the following new subsection:

"(c)(1) Notwithstanding any other provision of law, any civil action challenging the constitutionality of section 614 of this Act or any provision thereof shall be heard by a district court of three judges convened pursuant to the provisions of section 2284 of title 28, United States Code.

"(2) Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of three judges in an action under paragraph (1) holding section 614 of this Act or any provision thereof unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order.".

HOME WIRING

SEC. 18. Section 624 of the Communications Act of 1934 (47 U.S.C. 544) is amended by adding at the end the following new subsection:

"(g) Within 120 days after the date of enactment of this subsection, the Commission shall prescribe rules and regulations concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber.".

AWARD OF FRANCHISES

SEC. 19. (a) Section 621(a)(1) of the Communications Act of 1934 (47 U.S.C. 541(a)(1)) is amended by inserting immediately before the period at the end the following: "; except that a franchising authority may not unreasonably refuse to award an additional competitive franchise. For purposes of this subsection, refusal to award a second franchise on the grounds of technical infeasibility shall be deemed not to be unreasonable. Any applicant whose application for a second franchise has been denied by a final decision of the franchising authority may appeal such final decision pursuant to the provisions of section 635 for failure to comply with this subsection".

(b) Section 635(a) of the Communications Act of 1934 (47 U.S.C. 555(a)) is amended by inserting "621(a)(1)," immediately after "section".

FRANCHISE REQUIREMENTS

SEC. 20. Section 621(a) of the Communications Act of 1934 (47 U.S.C. 541(a)) is amended by adding at the end the following new paragraph:

"(4) In awarding a franchise, the franchising authority shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the geographic area within the jurisdiction of the franchising authority.".

DIRECT BROADCAST SATELLITE SYSTEMS

SEC. 21. (a) The Federal Communications Commission shall, within 180 days after the date of enactment of this Act, initiate a rulemaking proceeding to impose, with respect to any direct broadcast satellite system that is not regulated as a common carrier under title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.), public interest or other requirements on direct broadcast satellite systems providing video programming. Any regulations prescribed pursuant to such proceeding shall, at a minimum, apply the access to broadcast time requirement of section 312(a)(7) of the Communications Act of 1934 (47 U.S.C. 312(a)(7)) and the use of facilities requirements of section 315 of such Act (47 U.S.C. 315) to direct broadcast satellite systems providing video programming. Such proceeding also shall examine the implications of the establishment of such systems for the principle of localism under such Act, and the methods by which such principle may be served through technological and other developments in, or regulation of, such systems.

(b)(1) The Federal Communications Commission shall require, as a condition of any initial authorization, or renewal thereof, for a direct broadcast satellite service providing video programming, that the provider of such service reserve not less than 4 percent nor more than 7 percent of the channel capacity of such service exclusively for noncommercial public service uses. A provider of such service may use any unused channel capacity designated pursuant to this paragraph until the use of such channel capacity is obtained, pursuant to a written agreement, for public service use. As used in this paragraph, the term "public service use" includes—

(A) programming produced by public telecommunications entities, including programming furnished to such entities by independent production services;

(B) programming produced by public or private educational institutions or entities for educational, instructional, or cultural purposes; and

(C) programming produced by any entity to serve the disparate needs of specific communities of interest, including linguistically distinct groups, minority and ethnic groups, and other groups.

(2) There is established a study panel which shall be comprised of a representative of the Corporation for Public Broadcasting, the National Telecommunications and Information Administration, and the Office of Technology Assessment selected by the head of each such entity. Such study panel shall, within 2 years after the date of enactment of this Act, submit a report to the Congress containing recommendations on—

(A) methods and strategies for promoting the development of programming for transmission over the public use channels reserved pursuant to paragraph (1);

(B) methods and criteria for selecting programming for such channels that avoids conflicts of interest and the exercise of editorial control by the direct broadcast satellite service provider; and

(C) identifying existing and potential sources of funding for administrative and production costs for such public use programming.

(c) As used in this section, the term "direct broadcast satellite system" includes (A) any satellite system licensed under part 100 of title 47, Code of Federal Regulations, and (B) any high power Ku-band fixed service satellite system providing video service directly to the home and licensed under part 25 of title 47, Code of Federal Regulations.

SEPARABILITY

SEC. 22. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application as to which it is held invalid, shall not be affected thereby.

EFFECTIVE DATE

SEC. 23. Except as otherwise specified in this Act, the requirements of this Act shall be effective 60 days after the date of enactment of this Act. The Federal Communications Commission may promulgate such regulations as it determines necessary to interpret such requirements that are not inconsistent herewith.

The PRESIDENT pro tempore. The Senator from Kentucky [Mr. FORD].

Mr. FORD. Mr. President, for many years I have followed the events that resulted in the growth of the cable television industry. When I first came to the Senate in 1975, the cable industry consisted of small operators that I referred to, and many others referred to, as moms and pops. Due to a series of favorable court decisions, regulatory rulings at the Federal Communications Commission and congressional actions the face of the cable industry in the past 15 years has changed from what we referred to as moms and pops to large multiple system operations. During the 1980's, not a week went by that some cable system in Kentucky was not purchased by a huge cable company. The moms and pops, as we knew them, were cable systems of service. The huge cable companies are not.

Unlike the television networks, there have been no constraints on the growth of the cable industry. Cable companies are allowed to own cable systems and the channels that provide programming for the cable systems, something that the government has never allowed the networks. This morning's Wall Street Journal stated that one cable company, TCI, generates a cash flow of $1.7 billion a year—more than ABC, CBS, NBC, and the Fox network combined. In the three-part series on cable recently in the Washington Post, Robert Johnson, creator of the Black Entertainment Television and chairman of the District of Columbia's Cablevision, was quoted:

> When people want to do business in the cable business, they have to talk to John Malone—chairman of TCI.

If the tables were turned and Tom Murphy of ABC, Laurence Tisch of CBS, or Bob Wright of NBC had that kind of power over an entire industry, we would be doing something as we have heard a lot of talk on the Senate floor on network power.

In 1984, the Congress voted to deregulate the cable industry. In 7 years, the industry has completely changed and cable has grown into a multibillion dollar industry. Without any government oversight, huge companies grew at an unprecedented pace. I was absolutely amazed at the prices paid for cable systems in Kentucky.

Although a lot of debt was the result of this cable free-for-all, there is enough cash flow in the business to allow this growth. Recently, we have been hearing a lot about the salaries of corporate executives in the United States. If you take a look at the list of the highest paid executives in America, cable leads the list. Last year, one executive made $76 million which leads me to believe that it is time to take a fresh look at the cable industry.

The Commerce Committee embarked on an effort 3 years ago to reregulate the cable industry. The combined leadership of the chairman of the subcommittee, Senator INOUYE, the chairman of the Committee, Senator HOLLINGS, and the ranking member, Senator DANFORTH, led to the bill we are considering today. I know of no other issue before the Commerce Committee that has generated as many hearings and comments. Senator INOUYE has done a terrific job of handling all of the issues surrounding the cable debate. Senator DANFORTH has never let up in his effort to resolve the cable problems. I would also like to commend the staff—Toni Cook for the majority and Gina Kenney for the minority.

S. 12 brings back regulation of cable rates. A monopoly service unregulated brings about the kind of rate increases being experienced throughout the country. Many citizens in Kentucky have mailed me copies of their cable bill. I do not know the group behind this effort, but it is a very effective campaign.

Mr. President, let me just show you what I received today just from one part of Kentucky. "My cable monthly rate, $24.95." That is down in Murray, KY. Madisonville, $26.77. Gilbertsville, $24.43; Dawson Springs, $20.69. I could go on and on, Mr. President. Hopkinsville, $27.81. But these are the copies of the bills that my constituents are sending to me. It is a very effective campaign, and I expect other Senators will start receiving the same sort of bills that I have been receiving.

The General Accounting Office testified that average cable rates for basic service has jumped by 43 percent since 1986. In some parts of Kentucky, Mr. President, the rates have risen over 200 percent. In a recent move to circumvent the reregulation of basic service in S. 12, cable companies have been retiering.

In 1991, the GAO testified that 40 percent of cable systems had shifted their most popular cable services, such as CNN and ESPN, out of the basic tier. Prices for the new tier rose three times the rate of inflation. Also, when the GAO posed as potential cable customers, they were not informed of the lower cable basic rate. It is time, Mr. President, for reform, and I believe S. 12 is the vehicle.

In 1987, I joined with Senator GORE and Senator BUMPERS in an effort to make the views of the owners of the backyard satellite dishes known to Government policymakers. Only half of the State of Kentucky is wired for cable. Due to the small population density in the unserved areas, it is doubtful that these areas will ever receive cable.

Most of these unserved areas are in the mountainous eastern part of my State. Up until the satellite dish became available for consumers, most of these citizens received only one channel—an affiliate in Knoxville, TN. All of a sudden, after an expensive purchase of a satellite dish, the entertainment world was opened to these Kentucky citizens. Within a short time, 30,000 dishes had been purchased in Kentucky.

Fairly soon, the heavy hand of the cable industry hit the backyard satellite dish industry. My colleagues and I made an effort to find a compromise to guarantee programming to these consumers, but we were unsuccessful.

I am delighted that provisions of the original bill introduced in 1987 on program distribution and exclusivity are included in the legislation we are considering. A lot of credit goes to Senator GORE as he has been the champion of this issue.

Another technology that has evolved in the past 10 years is the low power television industry. I was successful in getting an amendment to S. 12 which requires cable operators to carry low power television stations known as LPTV, where there are not sufficient full power stations to fill the channels allowed for must-carry. Must-carry would only apply for low power stations that broadcast a substantial amount of locally produced programming and comply with the public interest requirement that full power stations must meet.

In Kentucky, there are several examples of the public benefit of low power stations. During Desert Storm, the low power station in Hopkinsville, KY, which is adjacent to Ft. Campbell, carried the homecoming of the 101st Division as well as many stories about local heroes. This kind of coverage was not duplicated by the full power stations as they did not have the local interest. In Lebanon, KY, local high school and college graduations are aired as well as high school sports. I believe the locally produced programming deserves must-carry and I will do what I can to see that this provision is retained in this bill.

Another area of S. 12 in which I was successful in the Commerce Committee's consideration of the bill is the home wiring issue. I was contacted by local officials in Glasgow, KY, regarding a problem they were having with the local cable system. In an effort to provide competition, the city of Glasgow built another cable system. The other cable system would go into cable customer's homes and pull out all of the wiring in an attempt to keep customers from changing over to the city-owned cable systems, needless to say, cable customers were not happy with the idea that their walls and carpeting could be harmed just to change the cable system. I believe that once the cable wiring is in the home, it is the property of the cable customer, not the company.

In the bill, there is a requirement that the FCC will promulgate rules concerning the disposition of cable installation wires within the home when the subscriber terminates or changes service.

Finally, Mr. President, I read with interest the article in this morning's Washington Post about the strategy of the cable industry on this bill. There will be an attempt to substitute S. 12 with a weaker version. The question then is, Does the Bush administration support the substitute or do they prefer no bill at all?

I urge my colleagues to read this article before voting on the substitute. It is really an effort to kill S. 12. In hard economic times, this is an area where we can do something. Stemming the tide of biyearly rate increase for cable is something we can do now by voting for S. 12.

Mr. President, I ask unanimous consent that the article in the Washington Post of this date, "Substitute Strategy for Cable TV Industry," be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Jan. 27, 1992]

"SUBSTITUTE" STRATEGY FOR CABLE TV INDUSTRY

(By Paul Farhi)

The cable television industry says it and the Bush administration support a Senate bill that would re-regulate cable TV prices and other aspects of the business.

On the other hand, maybe they don't.

With the debate on cable regulation scheduled to begin today in the Senate, an internal National Cable Television Association (NCTA) memo indicates that the industry group is trying to build support for a weaker bill than the one that passed the Senate Commerce, Science and Transportation Committee in June.

The weaker bill—sponsored by Sens. Bob Packwood (R-Ore.), Ted Stevens (R-Alaska) and John F. Kerry (D-Mass.)—would restrict the number of channels that local officials could regulate and soften other limitations contained in S. 12, the bill approved by the committee.

By urging support of the weaker substitute version, the memo from NCTA President James P. Mooney makes clear, the cable group hopes to draw enough support away from S. 12 to slow the re-regulatory momentum in Congress and give the White House enough backing to threaten a veto that Congress could not override. The split might leave Congress at an impasse—and the cable industry free of any new legislation.

"If the 'substitute' prevails, or even if it gains 34 or more votes [eliminating the possibility of Congress overriding a presidential veto], the politics of the controversy will have been substantially altered," last week's memo from Mooney to the NCTA's board members says.

But the memo also make clear that the NCTA—and the White House—don't really want the substitute bill, either.

"The Administration is on board, and will be supporting the 'substitute' . . . but will not support the bill even if the amendment is adopted," the memo states. "We are taking the same position."

Either version of the bill puts the Bush administration in a difficult position. If it vetoes the legislation, the White House risks being painted as anti-consumer during an election year by the bill's proponents. If President Bush signs a cable bill into law, however, he will be putting his signature on a re-regulation at a time when he is urging a moratorium on regulation.

White House officials could not be reached for comment.

In an interview Friday, Mooney called the cable association's position "a garden variety legislative strategy. It happens every day in Washington."

He added, "We don't think there should be legislation, but if there has to be legislation, we think it should be more moderate and not a grab bag filled with our opponents' wish list."

One of those opponents, Gene Kimmelman of the Consumer Federation of America, said the cable organization's strategy "proves their support of the substitute is like a Trojan horse. This is not a legitimate effort at compromise; it's a political tool to jettison all legislation."

Mr. FORD. Mr. President, I yield the floor.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER (Mr. WIRTH). The Senator from Oregon.

Mr. PACKWOOD. I thank the Chair.

Mr. President, I rise today to oppose S. 12, the Cable Television Consumer Protection Act of 1991. I do so because the burdensome regulation this bill would impose on our cable industry is unjustified. Not only is it unjustified, but it also would hamper the continuing efforts of cable operators and programmers to expand viewer choices and to develop new technologies. In the end, I believe this is contrary to the interest of this country and to the interest of cable consumers.

While problems in the cable industry do exist, S. 12 goes well beyond what is needed to address these problems. If we are going to pass legislation, it should be narrowly crafted to address genuine problems through competitive, market-oriented means, whenever possible, and without creating intrusive and unnecessary Government regulation.

The wisdom and importance of seeking a competitive, rather than regulatory, response to cable problems are obvious. In the late 1970's and early 1980's, the development of the cable industry in the United States had stalled.

First, efforts to wire the Nation's largest cities were in disarray.

Second, overregulated and uneconomical cable systems were failing to attract sufficient subscribers, largely because of inadequate programming.

Third, attempts to launch new cable programming services were failing because of limited channel capacity, low ratings, and insufficient revenues.

Fourth, the cable industry faced an apparently inescapable dilemma: it could not attract additional subscribers and increase revenues without new and innovative programming, and it could not afford to develop such programming without additional subscribers and increased revenues.

Therefore, in 1984, Congress moved to address the crisis facing the cable industry. We passed the Cable Communications Policy Act. This act, for the first time, established a national policy for the cable industry. It was designed to encourage the growth of cable systems and cable programming for the benefit of consumers. It did this by eliminating unnecessary and burdensome regulation by local franchising authorities.

Let me emphasize what I just said: The 1984 Cable Act eliminated unnecessary and burdensome regulation. It did not eliminate all regulation of the cable industry. What some people forget is that the cable industry is still regulated. Under current law, local franchising authorities can:

First, impose and collect franchise fees, up to 5 percent of gross revenues;

Second, determine how many public, educational, and governmental access channels a cable operator must set aside;

Third, establish customer service requirements;

Fourth, set basic cable rates, where there is no effective competition;

Fifth, determine how many cable franchises to award in their area; and

Sixth, specify channel capacity and other technical requirements.

Although it may not be the most popular thing to say, the Cable Act has achieved much of what Congress intended. Last year, the Federal Communications Commission submitted a report to Congress assessing the success of deregulation and the status of competition in the cable industry. That report reached the following conclusion:

In compiling and analyzing the record leading to this report, we have found that since the Cable Act of 1984, the cable television industry and cable television subscribers have benefited significantly from the regulatory certainty and economic freedoms contained in the act. Cable operators have expanded their systems—both in terms of service area and channel capacity—deployed new technology and invested in new programming, thereby increasing choices for consumers. The Cable Act was intended to establish a national policy concerning cable communications that would promote competition, minimize unnecessary regulations imposing undue economic burdens on cable systems, and encourage the provision of the widest possible diversity of information sources and services to the public. In many respects these fundamental purposes of the Cable Act are being accomplished.

I emphasize again, that was a report of the Federal Communications Commission.

The Commission found the growth and development of the cable industry since the Cable Act was readily measurable. For example:

First, today, 90 percent of all U.S. television households have access to cable television, as compared to about 60 percent in 1984—only 8 years ago.

Second, today, 90 percent of all cable subscribers receive more than 30 channels versus only 60 percent in 1984.

Third, the cable industry has substantially increased its investment in new technology and programming:

Since 1984, over $5 billion has been invested in new plant and equipment; and

Annual investment in basic programming has more than tripled.

The American public has clearly welcomed and benefited from the growth and development of the cable industry. Welcomed because the number of cable subscribers has grown from 37 million in 1984 to more than 55 million in 1991. Benefited because today more than 70 cable networks are available to subscribers and over a dozen additional services are in the works. Through these networks, cable television offers the American people an unparalleled variety of specialized programs tailored to consumers' individual needs and interests. You can turn on your television and watch:

First, gavel-to-gavel coverage of the proceedings of Congress on C-SPAN;

Second, 24-hour news on CNN;

Third, home shopping;

Fourth, music videos;

Fifth, classic movies;

Sixth, documentaries; and

Seventh, the list goes on and on, including numerous foreign language stations.

Some of the proponents of S. 12 will argue that the increasing number of cable subscribers reaffirms their argument that cable is a monopoly. They argue that people have no choice so they keep signing up. I would argue that cable offers people something they want, something they are not getting anywhere else and something that is a relatively good value. That is why the number of subscribers continues to increase.

Up until now, I have spent a lot of time recounting the successes of the 1984 Cable Act. And, on balance, I believe the act qualifies as a success story. However, I fully recognize the problems that have arisen as a result of the rapid growth of the cable industry since 1984.

First, State and local franchising authorities and cable subscribers have complained about rate increases and poor customer service.

Second, the cable industry's competitors have argued that the cable industry enjoys "unfair" advantages in the video marketplace.

Although there is evidence that some cable operators have abused the freedoms given them by the Cable Act, much of the current criticism of the cable industry—and much of S. 12—is misdirected.

Let me point out the actions already taken by the cable industry to address some of these criticisms:

First, it has adopted customer service standards which are being implemented nationwide. These standards specify:

How fast telephone calls must be answered;

How quickly service and billing problems should be corrected; and

How fast signal outages must be repaired.

As of July 1, 1991, about 85 percent of the Nation's cable systems serving 70 percent of subscribers were in compliance with these standards.

Second, it has negotiated a technical standards agreement with the cities and counties.

Third, it has negotiated a must carry deal with both commercial and public broadcasters.

Even with this, Mr. President, the industry continues to come under fire. And the biggest complaint seems to be over rates. The proponents of S. 12 point to excessive increases in rates since they were deregulated in December 1986. These claims are, in my view, misleading.

It is true that cable rates have exceeded the inflation rate since 1987. But 1987 is not the relevant year to start the comparison. It is much more relevant to compare today's rates with those in 1972, when the FCC first regulated cable rates.

The cable industry argues that the regulation of rates between 1972 and 1986 kept them artificially low. As a result, when rates were deregulated in December 1986, we saw relatively big rate increases in the first couple of years, but the increases have started to moderate.

The facts seem to bear this argument out. The average price of basic cable service was $5.85 per month in 1972.

I want to emphasize again that was for basic cable service in 1972—$5.85.

At the beginning of 1990, basic service was priced as $16.33, on average throughout the Nation—6 percent less than the rate would have been had it simply kept pace with inflation.

I want you to think again what it was you got in 1972 in the basic cable service. You were lucky if you got anything more than the carriage of the over-the-air networks, major—ABC, NBC, CBS—networks, a local independent television station, and your public television stations, if your area had those; and one or two other things: no CNN, no Discovery channel, no ESPN. Today, for your basic rate—forget whether you subscribe to any of the premium channels—for your basic rate you get infinitely more channels, infinitely higher quality reception, and at a price that is less than it was in 1972 counting for inflation.

The result has been a relatively stable price per channel since deregulation, since 1986.

Another important factor to consider is the evidence that the increases that have occurred over the past few years are moderating. My good friend from Kentucky mentioned the GAO study. According to the General Accounting Office, the so-called bottom line measurement of cable rates—the average monthly cable subscriber bill—increased less than the overall rate of inflation in 1990.

Finally, changes in the FCC's rules will ensure that rates continue to moderate. Earlier this year, the FCC modified the effective competition test for determining when local rate regulation is permissible. Under the Commission's revised definition, 60 percent of all cable communities will once again be able to regulate basic cable rates.

In light of these facts and developments, the record before Congress plainly does not justify the massive reregulation of the cable industry proposed by S. 12. In the words of the FCC, today's video marketplace is a "highly dynamic sector in the midst of transitions." We have seen relatively new technologies such as cable television and home videotape machines strongly challenge the broadcast television industry. Even newer technologies such as direct broadcast satellite service are waiting in the wings. In such a dynamic environment, it is difficult to distinguish long-term systemic problems from short-term transitory ones.

S. 12 fails to draw this distinction. Consequently, it has the real potential to cripple the growth of cable programming and service options without benefiting cable consumers. Congress should not hamstring an industry that has contributed so much to the Nation's entry into the information age.

In its 1990 cable report, the FCC concluded:

> In light of the developing field of existing and potential multichannel competitors to cable, and evidence that even direct competition between cable operators may increasingly occur, we do not recommend any drastic or long-term regulation of cable rates and services * * *

S. 12 ignores this recommendation. I urge my colleagues to oppose this bill.

Mr. President, earlier in my statement I said I recognized that problems have developed since the deregulation of the cable industry and that any legislation in this area should be tailored to address those problems specifically. At the appropriate time, I plan to offer an amendment that I believe does just that. While I will not go into the details of this amendment now, I want to put my colleagues on notice that they will have a chance to vote for an alternative to this bill, which will remedy the few complaints we have had without the over-regulation that is absolutely rife throughout S. 12.

I thank the Chair.

I yield the floor.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri [Mr. DANFORTH] is recognized.

Mr. DANFORTH. Mr. President, a couple of weeks ago I was in our State capital of Jefferson City. I knew before I arrived in Jefferson City that within 5 minutes of my arrival I was going to be asked about the status of the cable television bill. And that prediction came true. There was never any doubt in my mind that it would come true, because between 1986 and mid-1990, in Jefferson City, the cable television rates increased by 186 percent.

I am reasonably sure that when I am in St. Louis, and a short period of time after arriving in the city, I will also be asked about the status of the cable television bill. That is so because in St. Louis, basic cable rates have increased 142 percent since deregulation.

I can also predict that when I am in Hannibal, when I am in Cape Girardeau, when I am in various communities in our State, I am going to get a quick question after my arrival on the issue of cable television and cable television rates.

The questions come from all kinds of people. I was in southwest Missouri a couple of weeks ago, and a rock-ribbed Republican supporter of mine, a person who is quite conservative as a matter of economic and political philosophy, came up to me and said, "When are you going to get the cable bill passed?"

So this is not just a matter of national statistics; it is a matter of real concern in communities throughout the State of Missouri, and I would think the communities throughout the United States, as well. It is interesting that questions are raised to me by Republican supporters of mine and Republican friends, and I think that, speaking as a Republican, and speaking as a person who has long been a foe of excessive governmental regulations, it is really part of the tradition of my party to oppose regulation, but to also oppose unregulated monopolies. And that is what the cable industry is now in the United States.

It was a Republican President, Theodore Roosevelt, who furthered the cause of antitrust legislation. It was a Republican Senator, Senator John Sherman, who was the author of the major antitrust legislation which we have in the United States. And their theory was that competition is always preferable to regulation, but if there is no competition, there should be regulation, because the worst result is an unregulated monopoly.

That is what cable television is throughout United States; it is an unregulated monopoly. It is an unregulated monopoly which, frankly, was not anticipated when Congress passed the cable deregulation law in 1984. At that time, it was assumed that once cable was deregulated, in very short order competition would arise. In fact, that was the debate back in 1984 when I voted for the cable deregulation legislation. Head-to-head competition was expected to develop. The then-chairman of the Communications Subcommittee, Senator Goldwater, argued that by 1986 or 1987, in his words, "every homeowner in this country [will be] able * * * to have television reception directly from satellites, of television programs going on in literally every country in the world." Senator PACKWOOD predicted that satellite dishes would be on the roofs of America in 2 to 3 years. The president of the National Cable Television Association, Thomas A. Wheeler, testified at the Senate hearing that—

> Cable systems are overbuilding each other, and by overbuilding we mean that a consumer will have a couple of choices of cable companies. There will be two cable wires running down the street.

That was the representation back in 1984 when we passed the act, that we would have other multichannel providers. We do not have other multichannel providers. We have, instead, unregulated monopoly in the cable industry. An unregulated monopoly means high rates, unregulated monopoly means poor service, and unregulated monopolies in some communities mean that the cable company is so callous about the consumers of America that they do not even answer the phone. That is what I am told by my constituents. "When we have a complaint about the quality of service, we put in a phone call, and nobody even bothers to answer the call. The phone just keeps ringing."

That is the predictable nature of a monopoly, and that is the case.

Well, Mr. President, the legislation that is now before us is legislation that would authorize municipalities to regulate cable rates within certain parameters established by the Federal Communications Commission. It does provide for regulation, but only regulation where there is not another multichannel provider. If another multichannel provider materializes, whether it is a cable company, microwave transmission, or whatever, then the regulating power sunsets.

So all we are saying in this legislation is that the exact objectives of the 1984 legislation should become reality; that we should have competition; that we prefer competition to regulation. We would rather have competition. We want competition. We encourage competition. But until competition arrives, then regulation is necessary. The basic principle, again, is that unregulated monopolies are bad, not a new idea in America.

Mr. President, I had hoped that we could somehow work this legislation out prior to Senate passage. Consistently, I have said to anybody who will listen that as far as I am concerned the suggestion box is open. Anybody who wants to come forward and make a proposal for compromise is perfectly welcome to do so. We have been at this now for something like 2 years, trying to work out legislation which everybody could accept reasonably. It has not worked out that way. We failed to accomplish anything.

I got my hopes up last week. I got my hopes up because I got wind of the fact that compromise was again in the wind. I got my hopes up because I was told that a proposal had been put forward, and I was told that the White House had signed off on the proposal. And while it was not quite what I wanted, I believed that at least it provided the basis for serious negotiations. And I thought we could come together with something that perhaps was satisfactory.

I hoped that; I believed that last Friday. But it turned out, as reported in the Washington Post this morning, that there was not any compromise proposal at all. It turned out that neither the cable association nor the administration is willing to compromise in the sense of saying, "here is our proposal, if you agree with the proposal or if we can work out a proposal, then we will support the bill."

The chief of staff of the White House today told the staff of the Senate Commerce Committee that the administration did not want any cable bill. That was what was reported in the Washington Post this morning. They do not want a bill. Fine. I say this to the Senate because Senators may be told that the substitute that will be offered is a compromise. It is not a compromise. It is a proposal that would merely gut the bill. It is a proposal that in itself is unacceptable, and it is a proposal which is designed for the purpose of giving some Senators something to vote for so that then they could vote against final passage, or then they could vote to sustain a Presidential veto.

It is a killer substitute. It has no effect other than to kill the legislation. It is a very flimsy cover, and I hope that Senators would not be fooled by it.

The fundamental issue is whether in America we should have unregulated monopolies. The question is whether the American people really want a situation in which the cable companies have absolutely free rein to increase rates as much as they want and to allow service to deteriorate at the same time. That is the issue before the Senate. The so-called substitute just does not do the job. And the President would veto the bill anyhow, so there is no reason to even consider it.

This is, Mr. President, the No. 1 consumer issue that will be before the Congress this year. Absolutely no doubt about it. It has been so rated by the Consumer Federation of America. It is a bill which has tremendous support throughout the United States.

I want to just say one word about what constitutes effective competition, because the position that we have taken in the legislation is that what constitutes effective competition is another multichannel provider.

There are those who say that that is not the measure of effective competition. They say that people can do other things with their time other than watch television and therefore competition is anything anybody could do. If, for example, you were into jigsaw puzzles, jigsaw puzzles then would constitute effective competition for cable television. If you were into electric trains, that would be effective competition. Anything you can do with your time or perhaps any way you can get information, the newspapers, the radio, whatever, in their view would constitute effective competition.

But for the consumer of television where there is cable service, there is nothing else like cable service. It is the market. And today, Mr. President, it is an unregulated market without any competition at all. That is why this bill is essential.

Mr. President, Congress made a bold decision in 1984. It deregulated the fledgling cable television industry. Our goals were twofold. First, we sought to encourage cable TV to grow throughout the country. And, second, we wanted to foster marketplace competition through other video services, such as direct broadcast satellites, satellite master antenna television systems, and new signal compression techniques.

Mr. President, the 1984 Cable Act achieved its first goal. Cable's growth has been dramatic. In 1983, about 67 percent of all American households had the option of subscribing to cable. About 43 percent did subscribe. Today, nearly 80 percent of all American households have the option of subscribing and nearly 60 percent do. But this impressive growth has been achieved by a distortion in the marketplace. Cable today is an unregulated monopoly. The promise of competition goes unrealized today.

As a Republican, I believe in competition. The Republican tradition is to protect consumers by encouraging vigorous competition. The Republican tradition is not to allow unregulated monopolies. The Republican philosophy, which goes back to Teddy Roosevelt, the trust-buster, and Senator John Sherman, the Republican author of the Sherman Act, is both probusiness and proconsumer. Consumers are served best when businesses compete head to head. But neither consumers nor new business entrants are served by letting monopolies do whatever they please. Republicans do not delegate the power of Government to the absolute power of monopolists. Standard Oil and the railroads may have been the trusts of the past. The cable companies are the trusts of today.

I voted for the 1984 Cable Act. Like many others, I thought that developing competition could replace regulation. During the debate of the 1984 act dazzling promises of competition to cable from new technologies were made. Head-to-head competition was expected to develop. The chairman of the Communications Subcommittee, Senator Goldwater, argued that, by 1986 or 1987, "every homeowner in this country [will be] able * * * to have television reception directly from satellites of television programs going on in, literally, every country in the world." The chairman of the Commerce Committee, Senator PACKWOOD, predicted that we would be putting satellite dishes on our roofs "in 2 to 3 years." The President of the National Cable Television Association, Thomas A. Wheeler, testified at the Senate hearings that "[c]able systems are overbuilding each other, and by overbuilding we mean that a consumer will have a couple of choices of cable companies. There will be two cable wires running down the street."

The 1984 act was supposed to deregulate cable rates in the presence of effective competition. But, what has resulted is neither competition nor regulation. Instead, we have the worst of both worlds: Cable is an unregulated monopoly. The results of an unregulated monopoly are predictable: high rates; indifferent service; cable operators who drop local broadcasters, or place them on high channels; discrimination in the pricing of programming; problems with access to cable systems.

Since deregulation, consumers, cities, broadcasters, small cable operators, wireless distributors of video programming, and satellite dish owners have come to Congress for help. That is why the chairman of the committee, Senator FRITZ HOLLINGS, the chairman of the Communications Subcommittee, Senator DANIEL INOUYE, and a group of Democratic and Republican Senators have joined me in introducing S. 12, a bill to regulate cable television rates in the absence of effective competition.

S. 12 is similar to one favorably reported by the Commerce Committee last year. The Senate did not act on last year's bill despite our repeated efforts to negotiate a compromise with the cable industry. This May, the Commerce Committee voted 16 to 3 to report S. 12.

Despite its growth in service and programming, cable has been a disappointment. A September Consumer Reports study revealed that satisfaction with cable TV is the lowest the magazine has found in its entire history of rating service industries. And in the summer of 1990, 92 percent of the respondents in a CNN poll said that cable television should be regulated.

CABLE RATES

Although three quarters of the participants in the Consumer Reports study agreed with the statement that "[g]iven all the channels, there's still often nothing to watch," the number one complaint about cable is the price.

Facing neither competition nor regulation, cable rates have skyrocketed. The U.S. General Accounting Office reported in July that basic cable rates have risen an average of 56 percent since rates were deregulated at the end of 1986. That is more than twice the rate of inflation. Rates for the most popular cable programming increased 61 percent. In contrast, telephone rates increased 2 percent, and electric utility rates increased 11.2 percent during the same period.

My constituents have felt the squeeze of rate increases. Between 1986 and mid-1990, rates in the State capital, Jefferson City, increased 186 percent. St. Louis reports that basic cable rates have increased 142 percent since deregulation.

The cable industry attempts to defend its astonishing rate hikes. Cable operators argue that their programming costs are escalating. But the irony is that, while cable operators spent a paltry 25 cents of each subscriber dollar on programming in 1984, they spent even less—only 21 cents—in 1990. An August Justice Department study concluded that "at least 45-50 percent of the price increase since deregulation is due to market power," rather than cost increases. Rates have gone up, and will continue to soar, but not because of programming costs or other costs. Cable rates will soar and consumers will be gouged for one simple reason: there is neither competition nor regulations.

Since the introduction of cable reform bills in Congress, the cable industry has rushed to restructure its program offerings to evade even minimal regulation. Aware that under some proposals regulation would be limited to the lowest level of service, the basic tier of programming, cable systems have quickly rearranged their offerings to strip down their basic tiers. To avoid the possibility of rate regulation, cable companies are moving popular cable channels, like CNN and TBS, from their lowest-priced basic tier to more expensive expanded basic tiers.

According to the Wall Street Journal, retiering had spread to almost 60 percent of all cable subscribers by the middle of 1991 of it is likely to expand even further this year. Why are cable systems retiering? Simple. Usually far less than 10 percent of cable subscribers actually buy the stripped down basic service tnat would be subject to regulation under some proposals. Cable will go to any lengths to avoid rate regulation. What unregulated monopolist would not?

The question before Congress really is not whether regulation of cable rates should be permitted. That question was decided by the 1984 Cable Act. Under the 1984 act, franchising authorities—cities and States—may regulate cable rates where there is no effective competition. The question is what constitutes real competition. Cable operators would have you believe that they face competition because people can watch their aquariums at night instead of watching cable TV.

The FCC defined effective competition as three broadcast stations. With three broadcast signals in an area, such as the three networks, cable rates were deregulated. That is a ridiculous definition. It has no wonder that cable rates are deregulated for 97 percent of all cable systems.

In June, the FCC adopted a new definition of effective competition: six broadcast stations. This new standard is still too weak. It would expand regulation to less than 20 percent of the cable subscribers in the United States. It would not, for example, stop the rise in cable rates in St. Louis. The FCC's action does not protect the consumer. Americans spend $13.5 billion per year on cable instead of merely watching free TV. Clearly, the availability of broadcast signals does not represent real competition.

Real competition is the presence of a true competitor, such as a second cable system, a microwave system, or any other multichannel video provider. Where there is no true competition, cities should have the option of regulating cable rates. S. 12 provides that option. Rates for basic service can be regulated, within FCC guidelines, unless there is effective competition, from another multichannel video provider. In areas where residents have a choice between two providers, rate regulation automatically sunsets.

ENCOURAGING COMPETITION

Regulation is not my first choice. I would prefer true competition. S. 12 promotes competition in several ways. For instance, by sunsetting rate regulation once competition exists, S. 12 provides an incentive for cable to allow competition to develop.

The bill also encourages competition by prohibiting cities from unreasonably denying franchises to second cable operators. And, to prevent cable from strangling nascent competition, S. 12 limits cable ownership of microwave and satellite-delivery systems.

As another means of encouraging competition, S. 12 prohibits unfair business practices, such as unreasonable refusals to deal with competing media. If we are gong to have competition in the cable industry, those who want to compete with the entrenched cable operator must have reasonable access to the programming.

Potential competitors to cable, such as so-called wireless cable operators, complain that they are denied programming or are charged more for programming than the large cable operators affiliated with cable programmers. They point out that cable programmers who are affiliated with cable system operators have an incentive to favor cable operators over other distributors of video programming.

S. 12 addresses this problem by making it illegal for national programmers affiliated with cable operators, such as HBO, the unreasonably refuse to deal with cable competitors. These provisions are essential elements of cable reform. Without access to popular programming, cable can keep programming locked up and prevent competition from developing.

MUST CARRY AND RETRANSMISSION CONSENT

The relationship between broadcast and cable is another important element of cable reform. Today, cable operators are free to decide whether to carry local broadcasters on their systems and what channel numbers to assign. S. 12 creates a system under which broadcast stations may either elect carriage under the must-carry provisions or may opt to negotiate with cable operators for retransmission of their signals. In some cases, broadcasters may receive compensation for allowing cable to retransmit their signals, just as other programmers receive compensation for their programming.

Broadcasters, of course, benefit from being carried on cable systems. Many may determine that the benefits of carriage are sufficient compensation. S. 12 creates a flexible scheme to govern the relationship between local broadcast stations and cable systems in differing markets with differing levels of economic strength.

OTHER PROVISIONS OF S. 12

In other provisions designed to clean up the cable mess, S. 12 improves the franchising renewal process so that a community can kick out a cable operator who is not providing quality service. It also grants local authorities immunity from monetary damages for first amendment claims brought as a result of franchise decisions, although injunctive relief is still available to plaintiffs. The bill also allows the cities and the FCC to enforce tougher customer services and technical standards.

With the goal of creating an electronic soapbox and increasing the diversity of information available to cable subscribers, S. 12 directs the FCC to place caps on the rates for leasing a channel from the local cable system. And, because huge cable operators have great influence over which programmers can appear on cable, S. 12 requires the FCC to set reasonable caps on the size of the cable systems. To address a similar concern, the bill also directs the FCC to limit the number of channels that can be occupied on a cable system by a single programmer.

CONCLUSION

S. 12 is probusiness, procompetition, and proconsumer. It has been called one of the most important consumer protection bills pending in this Congress by the Consumer Federation of

America. It has the support of many organizations, the cities, and a broad array of business groups, all of whom are interested in breaking up the cable monopoly.

This bill is good government based on sound economics. The premise of the bill is simple and straightforward. Cable rates should be held in check by vigorous competition or, in the absence of competition, by regulation.

We must not shirk our responsibility to protect consumers from cable's unbridled market power. To quote Teddy Roosevelt:

I do not believe in the Government interfering with private business more than is necessary. I do not believe in the government undertaking any work which can with propriety be left in private hands. But neither do I believe in the government flinching from overseeing any work when it becomes evident that abuses are sure to obtain therein unless there is governmental supervision.

With neither competition nor regulation, the consumer is the loser. The time has come to treat the cable television industry like every other business in America. S. 12 does just that.

Mr. President, I ask unanimous consent to have printed in the RECORD recent articles about the need for cable reform and a list of groups supporting S. 12.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Jan. 15, 1992]

CABLE-TV FIRMS' HIGHER-PRICED "TIERS" BRING CRIES OF OUTRAGE FROM CONSUMERS

(By Mark Robichaux)

NEW YORK.—For the nation's cable-television operators, getting down to basics often seems something best avoided.

Keenly aware of reregulation threats and new federal rules that let more cities cap basic cable rates, cable systems have simply redefined what "basic" supposedly means. They have carved out a layer of popular channels to form a new "tier" that costs extra—and thus they effectively dodge the rules aimed at curbing price increases for basic cable.

The practice of "tiering" wasn't prevalent in late 1989, when Congress first threatened to impose new regulations on cable, just three years after it had largely deregulated the industry. But tiering had spread to almost 60% of all cable subscribers by the middle of last year. It is likely to expand even further this year.

CONSUMER COMPLAINTS

Consumer groups call it a shell game that has let cable companies blithely slap on unfair rate increases. In the past few months alone, the cable system in Los Angeles imposed a 12% increase on its most popular package, and the system here in Manhattan similarly set a 10% increase. Last March, Time Warner Inc.'s Brooklyn system formed a new tier that included MTV and CNN; nine months later, it raised the charge for the tier by 34%.

"Cash flow is the name of the game for these companies," says lawyer Nicholas Miller, who represents several cities in disputes with cable systems. "Their main concern is how do we frustrate, confuse, divide or slow down an attempt to regulate rates."

Almost all of the nation's biggest cable companies now use tiering. They maintain that it more fairly spreads the costs of various channels among the viewers who really want them, that it lets them lower the price of pared-down basic cable and reach viewers who merely want better reception and the low-income people who otherwise couldn't afford cash. Criticism of tiering "is pure cable-bashing that is totally unjustified," says Richard Aurelio, president of Time Warner's New York cable group.

Many cable operators, however, don't tell customers that a cheaper basic option is available. They simply switch customers over to the more expensive tiers through a "negative option" that requires subscribers to go out of their way to reject the change. In some cases, customers are penalized for switching to the lower-priced tier by having to pay an extra one-time charge.

Only a sliver of cable subscribers on tiered systems—usually well under 10%—actually buys the redefined narrow basic service. When federal investigators randomly called systems and posed as customers, they found that nine leading companies offering tiers didn't even acknowledge the existence of the lowest-priced basic tier, according to a recent report from the General Accounting Office. (Calls by a reporter to Time Warner systems in Manhattan and Brooklyn produced similar results.)

"The game for cable operators is to tell regulators that this is a separate and optional tier," says Joseph Van Eaton, a cable lawyer for several cities. "But they're telling subscribers that expanded tiers are part of basic service."

Despite cable operators' claims to the contrary, the price structure behind tiering often has little basis in reality, in terms of demand for the channels and operators' costs. For example, Time Warner's Brooklyn-Queens cable group previously charged $20.90 for 58 channels. Last March it split the dial into 24 channels for basic ($14.95) and a tier of 34 popular channels for an extra $5.95. Then it tacked on an extra $2.05 for the second tier last month, a 34% increase. Yet the tier probably costs the company only $3.52 to begin with, based on an average monthly cost of 16 cents a channel. (That average cost comes from Paul Kagan Associates, a media research concern; Time Warner's cable group declines to discuss specifics of its channel prices.)

Charging an extra $8 for the tier is "totally unjustified," asserts Bill Squadron, who oversees New York City cable systems as the city's telecommunications commissioner. "These companies are protecting unbelievably favorable market conditions—no competition and no regulation." Time Warner's Mr. Aurelio dismisses the charge as unreasonable.

STARTLING PRICE INCREASES

Just four years ago, cable companies were doing the reverse of tiering. When Congress freed cable from rate regulation by local governments, systems folded all channels and rates into one basic offering. Then they levied startling and aggressive price increases. Cable bills shot up 61% from December 1986 to July 1991.

Cable operators said the jump was needed to make up for years of artificially low rates, when local governments had refused to grant adequate fee increases. But a Justice Department report found that only about half of the rate rise was due to higher costs.

As criticism intensified, Congress began weighing new regulation but got nowhere. A bigger threat came from the Federal Communications Commission. In January 1990, the FCC announced a proposal that would vastly increase the number of communities allowed to ride herd on basic cable rates.

When Congress deregulated cable in 1987, it let a handful of communities—those that had fewer than three broadcast stations in their local markets—continue to regulate local cable rates. The new FCC rule proposed to let towns with fewer than six stations control cable rates, affecting 61% of all cable systems and covering 34% of all cable subscribers in the U.S.

But the FCC didn't pass the new rule until last July—and by that time tiering had taken hold. The FCC rule also had a major loophole: It let local governments control only basic rates.

"It tends to make a mockery of the process," says Bill Johnson, deputy chief of the mass-media bureau of the FCC. "It's annoying to the consumer because what they want isn't regulated by the city."

The new FCC rule gave Laredo, Texas, new authority to control local cable rates. But in June 1990 the local cable company, Paragon Cable, split its single package of 34 channels into a basic offering of 11 and a second tier of 23 channels. Subscribers who signed up for the expanded basic tier had to pay the system $15 each to change to the more limited basic service.

Three months later, the system raised the price of the second tier by 30%, from $5 to $6.50. It tacked another $2 increase on one year after that. The end result: In 15 months after Paragon imposed the tiered approach, Laredo subscribers were paying 21% more for the same 34 channels ($20.50 a month, compared with $17 when the tier was adopted in June 1990).

Paragon, a subsidiary of Kblcom Inc. in Houston, also lowered the price of its 11-channel basic offering to $7.95 a month from $12 last July, but only a small number of subscribers were affected.

Some cities are trying to fight the cable companies by seeking the right to regulate the extra tier of "expanded basic." The city of Gillette, Wyo., is in a court battle with Tele-Communications Inc., the nation's largest cable operator.

In December 1989, Tele-Communications retiered its channels and automatically switched customers to the expanded service. It also began charging extra for items such as converter boxes and cable guides. By May 1990, a customer would have had to pay $22.30 for the same package that had cost $16.74 five months earlier, a jolting 33% increase.

Outraged, the city passed an ordinance that set the price for basic service $12.80 and set expanded basic at $13.20. Tele-Communications refused to lower the price, and the city filed suit. In November, a federal judge ruled that the city had the authority to set only "basic rates." Now Gillette is pursuing a second argument, that TCI's "expanded basic" tier isn't really a distinct and separate product from basic service. (TCI officials declined to comment on the situation in Gillette.)

Tiering has also triggered resentment among newer cable channels, which fear a loss of distribution if they are placed on tiers with pay services.

Bills now in Congress address tiering, but if Congress regulates every level of service, "it will freeze the development of new programming," contends Steve Effros, president of the Community Antenna television Association, a cable trade group. He says proposed laws aimed at tiers would put artificial price caps on channels. "We are finding our price levels now," he says.

[From the New York Times, Nov. 15, 1991]

CABLE TV CUSTOMERS, GOUGED AGAIN

The Senate majority leader, George Mitchell, and Hollywood's Jack Valenti have just buried a bill to prevent monopolistic cable companies from gouging their customers. The sponsors expected a Senate vote this week, but Mr. Mitchell scheduled no floor time and has excluded the proposal from the list of bills to be considered before the Senate adjourns for the year.

Unless the bill is promptly disinterred, cable customers around the country will know who's to blame for the next outrageous cable price hike.

A 1984 bill freed cable television companies from local regulation. Since then cable costs have soared, rising three time faster than inflation. Some of the increases made up for punitively low fees set by local regulators. But studies suggest that by now, cable companies are earning exorbitant monopoly profits.

The Senate bill offers responsible re-regulation, with a light touch. It is directed at bad actors—empowering the Federal Communications Commission to set rates only where prices are outrageous and competition is lacking.

What makes the bill's sudden burial especially galling is Mr. Mitchell's excuse: the crush of end-of-session business. The cable bill was introduced on the earliest possible day and was one of the first bills this season to clear committee—in May. Putting off a vote until next year won't help consumers but it would guarantee a continued flow of campaign contributions to committee members from lobbyists for the studios, broadcasters and cable companies.

Mr. Valenti, who represents film and television producers, attacks a provision that would require cable companies to pay fees to retransmit the programs of over-the-air television stations. He cries foul, contending that that arrangement would jeopardize royalties of the Hollywood producers who make programs.

Mr. Valenti has a point, but it's a belated one. The cable companies have stalled negotiations for months and are using confusion over this provision as a pretext to scuttle the bill.

The best way to break the impasse and serve the public is for the Senate to pass the bill soon. The House, which overwhelmingly passed a similar bill last year, would quickly follow. Once Congress even comes close to action, watch how quickly Mr. Valenti and the cable companies figure out a way to resolve retransmission rights to everyone's satisfaction.

[From the Washington Post, Jan. 22, 1992]

REREGULATING CABLE: A POLITICAL RESPONSE TO A WIRED NATION

(By Paul Farhi)

If Sunday's Super Bowl telecast turns dull, even for a moment, viewers from Fairfax County to Fairfield, Calif., know exactly where to turn.

With just a few clicks of a remote control, the national attention span can wander through a blizzard of images: Nazi documentaries on the Discovery Channel . . . preachers on the Inspirational Network . . . handbags being hawked on the Home Shopping Network . . . nations in upheaval, live, on Cable News Network.

Cable television, which brings this video supermarket home, has revolutionized how Americans receive and perceive televised entertainment and news. Forty, 50 or even 75 channels of television are taken virtually for granted now. Most of it didn't exist less than a decade ago.

Today, 58 percent of all households—54 million in all—pay to receive TV programs over a copper wire. That represents a greater portion of the population than that which regularly attended a church or synagogue, subscribed to a newspaper, bought a book, or voted last year. In 1981, when MTV first went on the air and CNN was barely a year old, just 23 million households subscribed.

But cable's ascension has been met with as much protest as applause.

Cable subscribers have complained bitterly for years that local cable companies, which string the wires throughout a community and select the programming, have raised monthly rates indiscriminately.

Cable operators, most of whom have no direct competition in the communities they serve, have boosted the average monthly charges for basic cable service by 56 percent in the past five years, twice the overall inflation rate.

Cable's rivals, such as the broadcast networks and companies involved in alternative TV technologies such as direct-satellite transmission, charge that the cable industry has used its rate-setting power and control over cable programming to smother competition in the television marketplace.

Thus, cable's success has set the stage for a pivotal struggle before Congress over the laws and regulations that define the industry, which has annual revenue of $20 billion.

After four years of debate, the Senate is expected to take up a far-reaching legislative proposal next week that would give local government officials new powers to control the fees cable customers are charged and that would add new regulations to strengthen cable's competitors.

It's no surprise to find the industry's future on a political agenda. Unlike other trends and transformations of the 1980s, the cable revolution wasn't primarily the result of new technology or clever marketing. The means for carrying multiple-video signals over a copper wire has existed for decades. Instead, the development of cable television was fundamentally shaped by decisions made in Washington.

While broadcasters stymied the spread of cable in the 1950s and 1960s, the industry benefited from new laws and federal regulations during the 1970s that allowed cable systems to "import" programming, such as old movies, from faraway locations, and to string wires on telephone poles, making it easier and cheaper to build a cable system.

PIVOTAL LEGISLATION

Of all the political help cable received, none was more important than passage of the Cable Communications Policy Act of 1984. The law, designed to speed the growth of cable, set uniform national standards for the regulation of local cable systems.

The cable act and subsequent rulings by the Federal Communications Commission placed the owners of the nation's 10,700 local cable systems in an enviable position. Before the law was passed, the rates paid by cable customers to these operators were approved by the local government, which granted the cable company a license, or franchise, to place its lines along public rights of way.

The rationale for rate regulation was that cable companies, like local utility companies, were de facto monopolies. Since more than 99 percent of the nation's cable systems had—and still have—no direct competitor, local officials assumed the task of ensuring that customers weren't gouged by cable operators. Head-to-head competition is rare because the cost of building a second system in a community is considered prohibitive.

Passage of the 1984 act, followed by new FCC regulations, however, left operators free to set prices, beginning in 1987. Now, if critics have their way in Congress, localities would be empowered to roll back "unreasonable" rate increase.

"It doesn't take a rocket scientist to figure out why the cable industry grew as quickly as it did," said Gene Kimmelman, legislative director of the Consumer Federation of America, a vehement critic of the industry.

"Congress said, 'We'll give you a revenue stream that you can raise at will.' It was a piece of cake. The government basically said, 'Do what you want.' "

By some yardsticks, deregulation has been a success: Billions of dollars flowed from investors to build more new systems and create more original programming. The number of cable networks has increased from 29 to 72 in the past 10 years, and cable service is now available to more than 90 percent of the nation vs. 45 percent in 1981.

Yet the question driving congressional action remains: At what price?

THREE TIMES INFLATION RATE

Nationwide, the General Accounting Office said the cost of basic cable service (excluding premium channels like Home Box Office), rose from $11.14 to $17.34 a month from late 1986 to mid-1991, a 56 percent gain. The GAO figure applies only to basic service and does not take into account increases in installation costs, remote controls and other services provided by a local company.

Since the release of the GAO report last summer, Paul Kagan Associates Inc., a media and communications research firm in Carmel, Calif., estimated that for all of 1991 basic cable rates have increased 10 percent—about three times the general inflation rate. The cable industry's revenue has grown steadily through the recession, while other media businesses have experienced stagnation or decline.

In the years since deregulation, the rise in local cable prices has been steady—in some places, even spectacular.

Fairfax County's franchise holder, Media General Corp. of Richmond, has increased its monthly full-service prices 129 percent, to $25.95 from $11.34, since 1986. The cost of Media General's limited service, which provides fewer channels, increased by 289 percent, to $11.95 from $3.07.

In Montgomery County, the top basic service is expected to rise to $24.45 next month, a 173 percent increase since 1986; subscribers there receive seven fewer channels now than in 1986.

What cable customers get for their monthly fees varies widely, depending on which company provides the service. For $25.95 a month, Media General's system in Fairfax provides 79 channels.

In Arlington County, the same $25.95 buys 46 channels from Cable TV Arlington, owned by Hauser Communications. In Charles County, Jones Intercable provides 33 channels for $21.95 a month.

Whether the increases in cable rates since deregulation are "excessive" is a hotly debated question, with economic, political and social overtones.

Cable system executives contend that the marketplace adequately keeps rates in check, since cable TV, unlike telephone, electric, water or natural gas service, isn't a necessity and consumers can choose to do without it.

Three of 10 households that could receive cable transmissions choose not to do so and rising rates would be unlikely to lure them into the fold, industry officials said.

Some executives conceded that a few operators have overcharged customers. But they said price increases are justified by higher programming costs—a cable operator pays fees based on the number of monthly subscribers it serves to programmers like CNN and ESPN—as well as by additional channels and increased investment in plant, staff and equipment.

"What people fail to understand is that on a per-channel basis, we have not experienced unreasonable inflation," said Amos Hostetter, chairman and chief executive of Boston-based Continental Cablevision Inc., the nation's third-largest operator of local cable franchises.

"People want more channels and we have given that to them. That costs more money."

The GAO found a more mixed picture, however.

PAYING MORE FOR LESS

While the average system increased its basic service from 24 to 30 channels between 1986 and last year, consumers in some cases are paying more for less, the GAO said. The cost of the lowest-priced cable service rose 9 percent during the past two years, while the average number of channels on this tier, or package of channels, decreased by one.

In a spot check, GAO auditors posing as would-be customers found that some cable operators don't mention that they offer a lower-priced tier, apparently in an effort to steer customers to more expensive packages.

Noting the lack of direct competition, Justice Department economist Robert Rubinovitz wrote in a study published last summer: "It appears that market power has played a significant role in the price increases that have been observed."

Rubinovitz said in an interview that the industry "has charged more than seems justified based on their cost increases" since deregulation began.

Nevertheless, industry officials said removing their discretionary power over rates will hamper their ability to invest in and upgrade their cable systems.

Rate reregulation, they said, might delay or prevent operators from offering viewers more channels, better customer service and such advances as interactive programming and multiple channels of pay-per-view programs, sometimes called "video on demand."

"If [Congress] had not deregulated cable, we would not have been able to invent all the things we have invented," said N.J. Nicholas Jr., co-chief executive of Time Warner Inc., the nation's second-largest cable-system owner and parent of the Home Box Office channel.

"One thing that hasn't penetrated the psyche of people in Washington is that this is one technology that America leads the world in. . . . If we let the market work, it will."

LOCAL CABLE TV SINCE DEREGULATION

Monthly cost for basic cable service since price controls were lifted; companies have exclusive areas of operation and do not compete within counties.

LOUDOUN CO., VA

Company	Channels 1986–91	Cost 1991
Cablevision of Loudoun	NA/50	$22.90
Mid-Atlantic Cable	NA/49	[1] 22.90 [2] 23.90
MultiVision	NA/49	20.95

ARLINGTON CO., VA

Company	Channels 1986–91	Cost 1986–91
Cable Television—Arlington	31/46	$15.25/25.95

FAIRFAX CO., VA

Company	Channels 1986–91	Cost 1986–91
Media—General	68/79	$11.36/25.95
Warner Cable—Reston	28/54	17.20/21.45

PRINCE WILLIAM CO., VA

Company	Channels 1986–91	Cost 1986–91
Cablevision of Manassas	NA/58	$13.50/24.95
Columbia Cable/Dumfries	12/36	14.55/18.45
Columbia Cable/Woodbridge, Dale City	27/36	14.45/19.30
Columbia Cable/Lakeridge	NA/41	11.50/18.45
Columbia Cable/Fort Belvoir	30/40	10.95/17.95

ALEXANDRIA, VA

Company	Channels 1986–91	Cost 1986–91
Jones Intercable	33/44	$11.00/21.20

MONTGOMERY CO., MD

Company	Channels 1986–91	Cost 1986–91
Cable Television—Montgomery	63/56	$8.95/24.45

HOWARD CO., MD

Company	Channels 1986–91	Cost 1991
Mid-Atlantic Cable	NA/50	$23.95
Howard Cable	NA/35	22.25

CHARLES CO., MD

Company	Channels 1986–91	Cost 1986–91
Jones Intercable	31/33	$15.25/21.95

ANNE ARUNDEL CO., MD

Company	Channels 1986–91	Cost 1986–91
Jones Intercable	35/46	$14.25/19.45
North Arundel CATV	35/46	9.90/20.40
United Cable—Annapolis	35/46	11.10/19.50
Jones (So. County)	35/43	16.25/23.50

PRINCE GEORGE'S CO., MD

Company	Channels 1986–91	Cost 1986–91
MetroVision	60/63	$11.95/18.45
MultiVision	60/63	11.95/23.95

DISTRICT OF COLUMBIA

Company	Channels 1986–91	Cost 1985–91
District Cablevision	48/56	$15.00/22.45

[1] Town.
[2] County.

NA: Data not available or service was unavailable.

NOTE: Basic cable service typically includes broadcast stations, local government channels and major cable networks such as CNN, MTV and ESPN.

Data compiled by Christopher M. Crowley.

[From the Washington Post, Jan. 22, 1992]

COMPANIES' HEAVY DEBT ONE REASON FOR ESCALATING COSTS TO CONSUMERS

Cable TV operators often say the escalation in cable charges is justified by additional channels and improved customer service. But a rarely mentioned factor in the price spiral is debt.

Like other industries during the 1980s, many cable operators rolled up huge debt loads and have passed on these costs to their customers.

Put another way, the greater the indebtedness of the company operating the local cable system, the greater the likelihood for higher rates.

The debt accumulation of many operators is a direct result of the passage of cable price deregulation in 1984. The law unleashed a wave of buying activity among investors, who foresaw handsome returns from cable TV systems.

This buying activity drove up the prices of systems, causing companies to finance their purchases with ever-large amounts of borrowed money.

From 1985 to 1989, according to two government studies, about half of the nation's local cable franchises changed hands at least once.

The nation's largest cable TV company, Tele-Communications Inc. of Englewood, Colo., for example, is carrying $9.8 billion in long-term debt, mainly as a result of its aggressive acquisition program during the 1980s, when the number of subscribers it served expanded 4½ times.

To understand how debt costs cable subscribers, consider a tale of two streets in Prince George's County.

Residents of Royal Oak Circle, which is just south of Central Avenue, can order 63 channels for $18.45 a month from their cable company, MetroVision of Prince George's County Inc.

Just a few blocks north on Millwood Drive, in a part of the county served exclusively by MultiVision Cable, residents are charged 30 percent more for the same number of channels.

MultiVision is owned by a New York investment partnership organized by Merrill Lynch & Co., which paid $198 million to buy the franchise's parent company from Prime Cable Corp. in 1988. The buyout, one of the most expensive in the industry at that time, left the investors' operating unit under severe financial strain.

In 1986, before the buyout, the two companies' rates were equal. But MultiVision has since increased its prices well beyond those of its neighboring cable company. Now, every service offered by MultiVision, from installation charges to the cost of premium channels such as Home Box Office, is at least 20 percent higher than its southern neighbor, which has been under the same owner since its inception in 1982.

The pricing pattern in Prince George's County has echoes nationwide. In systems that were sold from 1984 to 1989, subscribers paid nearly 20 percent more for every channel they received than customers in systems that were not sold, the Federal Communications Commission said in a 1990 study.

A footnote: After nearly two years of relatively quiet activity, the buying and selling of cable systems has begun in earnest again. Paul Kagan Associates Inc., a research firm, estimates that the total value of all systems sold in 1991 will top $8 billion, compared with $1 billion for all of 1990.—PAUL FARHI.

[From the Washington Post, Jan. 22, 1992]

BROADCAST TV HELPED SECURE RIVAL CABLE'S POSITION IN MARKETPLACE

One of the great ironies of cable TV's rise is that it couldn't have been achieved without the help of its foremost rival—TV broadcasters.

Under long-standing federal policy, cable system operators can retransmit for free the signals of nearby broadcast stations, such as those affiliated with ABC, CBS, NBC and Fox.

Twenty or more years ago, this arrangement suited local broadcast stations and the networks in New York. Retransmission of broadcasting signals over cable simply brought the networks more viewers, since many rural residents couldn't receive television signals by any other means. And cable systems had little choice but to show network programs because there was little original programming made exclusively for cable.

But broadcasters—who have lost viewers, programs and advertisers to cable—now bitterly complain that cable is getting a free ride at their expense. At any given time, the National Association of Broadcasters (NAB) says, about two-thirds of those who subscribe to a cable system are actually watching broadcast programming—everything from "60 Minutes" to "L.A. Law"—that the cable operator is airing without payment to the broadcaster. Cable operators, on the other hand, pay license fees to air cable networks such as ESPN and MTV.

This cornstone of cable's power is under assault, however. Sen. Daniel Inouye (D-Hawaii) and Reps. Dennis E. Eckart (D-Ohio) and Jack Fields (R-Tex.) have sponsored proposals to give a local TV station the right to negotiate with the cable operator for compensation in return for the use of the broadcastrer's signal.

The National Cable Television Association has launched an advertising campaign warning that the compensation proposal amounts to a 20 percent tax on subscribers. The NCTA says that local cable systems would be likely to pass on to their subscribers any fees they are required to pay broadcast stations. To drive home the point, the trade group has placed fliers in the monthly bills of cable subscribers.

In fact, the legislation does not specify how cable operators would have to compensate broadcasters. The compensation could be something other than cash, such as a joint promotion, guaranteed channel position in the cable system's lineup or any arrangement agreed to by the cable company and broadcaster.

The NAB claims the amount of money transferred from cable to TV broadcasters would likely be small and that this would have no effect on what cable subscribers ultimately pay.

The issue is more than a matter of just dollars and cents, the broadcast industry argues.

Laurence A. Tisch, chairman of CBS Inc., has warned that the spread of cable television and the continued decline of broadcasting threatens to divide society into "information haves"—those who can afford the multichannel world of cable—and "have-nots" who must rely on free but much-reduced broadcast stations.

A recent NAB advertising campaign complained that cable operators have used their growing revenue to outbid the networks for the rights to major sporting or entertainment events. The NAB's ads urge viewers to "save free TV" by supporting the current crop of cable regulation bills.

The cable industry responds that many of the broadcast industry's problems are self-created—particularly the excessive fees the major networks, especially CBS, paid for the rights to broadcast big-league sporting events and poor choices made in programming.

Still, Tisch's rhetoric has found some support in Washington.

"Historically, the chairman of the board and the janitor on the floor had access to the same information" through universally available radio and TV broadcasts, said Rep. Edward J. Markey (D-Mass.), chairman of the House subcommittee on telecommunications. "That many not be the case in our technological future. . . . The more exclusive the audience that cable appeals to becomes, the more free TC declines, the more damaging it will be for our social fabric and our competitiveness as a nation."—PAUL FARHI.

[From the Washington Post, Jan. 23, 1992]

FEAR, LOATHING AND RESPECT FOR CABLE'S LEADER—TCI'S SIZE DRAWS CONTROVERSY

(By Paul Farhi)

When Robert L. Johnson, a Washington attorney and lobbyist, was trying to start a cable TV channel aimed at black viewers back in 1979, would-be lenders wrote him off.

John Malone, on the other hand, wrote him a check.

Malone, the chief executive of a Colorado company called Tele-Communications Inc., came up with $500,000 to help launch Johnson's Black Entertainment Television, a cable network now seen in more than 30 million homes.

Six years after starting BET, Johnson called on Malone again. This time, Johnson's District Cablevision, which had won an intense bidding war to provide cable service to the District, needed money to begin wiring the city. In exchange for 75 percent of District Cablevision, TCI put up $30 million to get the company going.

The two deals with Johnson were part of a broad pattern of investments by Malone over the past two decades in both ends of the cable industry; the companies that create programs and those that deliver the signals. With such financial engineering, Malone has turned TCI into the world's largest cable TV company and has, in the process, become one of the most formidable, if little known, figures in the television business.

Malone is also feared and resented by some within and outside the cable business. TCI's reach is so vast, its clout so powerful, that competitors and critics claim that it alone can make or break a new cable network, and that it can single-handedly hold back the development of emerging TV technologies, such as direct-to-home satellite broadcasting systems.

"John Malone," said Sen. Albert Gore (D-Tenn.), "is a monopolist bent on dominating the television marketplace."

TCI now owns the wires that bring cable TV to 9.2 million households in 42 states and the District. Through investments in other companies, TCI holds minority interests in systems serving another 3.7 million—a total of nearly one of every four homes with cable in the United States.

Along with its hundreds of cable systems, TCI also has a stake in the content of cable TV as well, through partial ownership of some of the most popular channels on cable. Cable News Network, BET, the Bethesda-based Discovery Channel—TCI owns a piece of these channels and others.

Malone personally led the cable industry's $568 million rescue of Ted Turner's Turner Broadcasting System in 1987. TCI now controls 22 percent of TBS, the parent of CNN, and Malone has veto power over Turner on any decision that costs TBS more than $2 million.

TCI also owns the largest chain of movie theaters in the nation through its United Artists Entertainment Co. subsidiary. Although TCI reported a $76 million loss for the first nine months of 1991, it took in $2.9 billion in revenue, and this flood of cash, not the loss, is the measure of its strength, analysts say.

"When people want to do business in the cable business, they have to talk to John Malone," said Johnson. "You don't have to have John's blessing to succeed, but if you've got it, it takes away a great deal of risk."

Malone, whose personal TV tastes veer toward old movies and science and nature documentaries, has kept a low profile outside the cable business. (Both he and TCI Chairman Bob Magness declined to be interviewed for this article.)

But just as television pioneers such as David Sarnoff of RCA Corp. and William Paley of CBS Inc. put an indelible stamp on an earlier communications era, so is the square-jawed, plain-spoken Malone leaving a major imprint on this one. Many of the cable networks that exist today could not have made it without Malone's vision and financial assistance, analysts and programmers agree.

TWO LEVERS OF POWER

It is precisely because of its size, however, that TCI generates controversy. Now, the complaints have reached Congress.

The Senate next week is expected to take up debate on a comprehensive rate-regulation bill that attacks the two levers of power that TCI and other big cable conglomerates, like Time Warner Inc., control in cable TV: the hardware (local cable systems) and the software (the programming).

"We're in a worse situation now than when we had just three big [broadcast] networks controlling what went on TV," said Nicholas Miller, a Washington attorney who represents city and county governments in disputes with cable companies.

"Now, instead of choosing among three networks, a viewer can only choose one [local] cable operator, who gets to pick and choose everything that gets shown on his system. TCI is only the scariest example of what has happened in the cable industry."

The Senate bill, sponsored by Sen. John Danforth (R-Mo.), includes a provision that directs the Federal Communications Commission to limit the number of subscribers and programming networks that a company can hold—a measure that seems aimed directly at TCI. There are no such limits now, but some lawmakers believe TCI's gatekeeping power over programming needs to be curtailed.

The congressional debate comes as a task force of seven state attorneys general are probing TCI, Time Warner and seven other big cable firms for possible antitrust violations. The task force's inquiry—which could soon result in a lawsuit or negotiated settlement—revolves around a central question: Have the big companies broken the law by withholding programming from competitors, or by selling their programming only under exorbitant terms? Cable's rivals in the satellite TV and "wireless" cable businesses (which uses microwave links to send TV signals) offer anecdotal evidence in the affirmative.

TCI officials dismiss critics of the company as the predictable griping of competitors. The officials say their power has been deliberately exaggerated by rivals in the broadcast business and by the telephone industry, which is seeking congressional action to permit them to enter the cable business.

"We aren't the people who always dominated TV before," said Bob Thomson, TCI's chief in-house lobbyist and spokesman, referring to the broadcast networks. "We're not an Eastern establishment-type company. That makes us an attractive target."

TCI is fighting back with more than words: The company and individuals affiliated with it contributed $232,000 to congressional campaigns during 1989 and 1990, according to the Federal Election Commission.

In recent years, TCI has been on the defensive over its dual ownership of both cable systems and cable networks, the conduit and content of the business. TCI and other big "multiple-system operators"—companies that own the wires feeding cable TV to many communities—are also part owners of CNN, MTV, Discovery and other networks. (The Washington Post Co. owns 52 cable franchises through the United States, but does not own any national cable networks.)

The danger of this kind of "vertical integration" is that a big cable company has a financial incentive to carry the channels it owns on its many systems while denying exposure to channels that might compete against it, the FCC has observed.

Consumer rights advocate Ralph Nader has likened the cable industry to a railroad that owns a coal company, a classic model for antitrust problems.

Critics cite the demands of TCI, Time Warner and other big system owners that pressured NBC into tailoring the content of its planned Consumer News and Business Channel (CNBC) in 1989. NBC agreed the channels would not cover general news like CNN, in which TCI, Time Warner and other cable companies have a financial stake.

A senior TCI executive said the cable operators wanted CNBC to stick to a defined niche so that the new channel wouldn't duplicate programming that TCI and others already were carrying. But Gore charged that TCI had kept CNBC off the air until it could be assured CNBC wouldn't compete with the industry-owned CNN.

"SHAKEDOWN" ALLEGED

"It was a shakedown by TCI," said Gore, a cosponsor of the reregulation bill. "The cable marketplace is choked to death because would-be competitors are prevented from being in the game. Any new programmer who comes into the cable business is going to be coughing up a share of his company [to cable operators] as the price of showing his wares to the public."

Indeed, few cable channels have been able to succeed in recent years without selling off a piece of themselves to the companies that own the wires. Of the 12 most widely distributed cable channels begun since 1984, all are partially owned by system owners, such as TCI.

DUAL-OWNERSHIP BAN SOUGHT

The Nader-backed Teledemocracy Project is lobbying for an outright ban on cable companies' ownership of programming, a step that would create the same kind of separation that previously prevented Hollywood studios from owning movie theaters and the broadcasting networks from owning the entertainment programs they air.

But TCI and others in the cable industry deny that dual-ownership is abusive. "We certainly don't see ourselves as king-makers," said Jedd Palmer, TCI's director of programming. "There are a variety of channels that are doing just fine without [TCI ownership]. . . . We would be crazy, crazy, if all we did was put on the programs we owned. We need diverse [program] sources to keep our subscribers happy."

The National Cable Television Association argues that simultaneous ownership of programming and cable systems is ultimately beneficial to viewers. Because a company owns its own programming, it needn't pay high fees to independent producers, the organization says. Thus, it can exercise greater control over its costs, generating savings that it says can be passed on to subscribers.

John Hendricks, chief executive of the Discovery Channel, points out that some program services, such as his own, would not have been able to survive without investment by system owners.

Yet these arguments don't wash with cable's competitors—like Dan Garner, for example.

Garner's company, Advanced Communications in Little Rock, Ark., is trying to launch a system that would transmit TV programs from a satellite directly to small antennas attached to viewers' homes or offices.

These direct-broadcast satellite (DBS) systems, still in their developmental stages, may some day be able to deliver dozens of channels to homes equipped with satellite dishes the size of dinner plates, placing them in direct competition with cable companies. But DBS may never develop fully under current circumstances, Garner believes. He said program suppliers—many owned by cable companies—want to charge his company as much as 10 times more for programming than a cable operator now pays. The higher prices, he said, are a deliberate attempt to raise his overhead so high that his service won't be price-competitive with cable.

Officials at the National Rural Telecommunications Cooperative, which leases and distributes via satellite such cable programming as CNN and MTV to current backyard-dish owners, tell a similar tale. The NRTC maintains that it must pay four times more for the rights to programming owned by the cable industry than cable-system operators themselves pay. (Cable operators pay a fee to programmers based on the number of subscribers in the operators' service area).

Program producers "are simply jacking up prices to us," said Bob Phillips, the NRTC's chief executive. "It's an economic protection for their cable [system] customers. If they make it so expensive for us, we won't develop, we won't pose a threat" to cable.

BIGGEST CABLE COMPANIES

Company	Subscribers (in millions)	Subscriber Market Share (percent)
Tele-Communications	9.2	[1] 17.1
Time Warner	6.6	12.2
Continental Cablevision	2.8	5.2
Comcast Cable Communications	1.7	3.2
Cox Cable Communications	1.7	3.2
Jones Spacelink	1.7	3.2
Storer Communications	1.6	3.0
Cablevision Systems	1.6	3.0
Newhouse Broadcasting	1.3	2.4
Cablevision Industries	1.1	2.0
Top 10 total	29.3	54.5

[1] Also has minority ownership of cable companies with another 3.7 million subscribers (7 percent of market share).

Source: Paul Kagan Associates Inc.

SOME PRICES "NOT JUSTIFIED"

The cable industry explains this alleged discrimination by pointing out the competitors like DBS have far lower operating costs than cable operators and thus can afford to pay more for programming. But the FCC disputes this, saying last June that some price disparities "are not justified."

The FCC concluded that some cable programmers, which it did not identify, may have violated laws against fair trade. The commission has taken no further action.

The state attorneys general investigation and a separate investigation by the Justice Department revolve around this dispute.

The state attorneys, including those from Maryland, California, Ohio and New York, have focused on a new DRS service called PrimeStar Partners, which is financially backed by TCI, Time Warner, Continental Cablevision and five other big cable companies.

In essence, according to one source close to investigation, the task force is trying to determine whether PrimeStar is in fact an attempt by the cable industry to dominate the DBS market and keep others out.

TCI and others deny it, saying they simply want to provide TV service in areas where cable TV is not available.

However, one investigator, noting that the backers of PrimeStar control 14 of the top 28 cable-programming networks, said, "The question is, can anybody get this programming, and will enough of it be available when a non-cable company wants to be in the [DBS] business?"

[From the Washington Post, Jan. 23, 1992]

CABLE PIONEER DUG ITS ROOTS IN THE WEST

The story of the cable industry's emergence as a driving force in American media is in many ways the story of Tele-Communications Inc.

Founded in 1952 by its current chairman and controlling shareholder, Bog Magness, the company grew up far from the traditional centers of information and commerce in America, in places like Memphis, Tex., and Elko, Nev., that were located too far from metropolitan broadcast towers to pull in clear images of "Howdy Doody" and "I Love Lucy."

Magness, a former cattle rancher, mortgaged his house and sold his livestock to raise money for his first cable system, and then built it himself by climbing telephone poles to string transmission lines. With his late wife, Betsy, handling the books, Magness brought four channels of TV to the hinterlands for $3 a month.

Executives of TCI like to think of their company as the underdog that took on the entrenched Eastern broadcasting establishment, and won. In interviews, TCI officials deride the networks as bumbling and bureaucratic, while portraying their company as the lean, driven upstart.

That image, while self-serving, does encapsulate some of TCI's rough-hewed past. TCI's challenge to the broadcasting giants has been fostered by a bare-knuckles negotiating style and willingness to take daring financial risks.

At the same time that CBS, NBC and ABC were establishing their dominance over TV entertainment and news, TCI was struggling to fill the channel space available on its local systems. Because few companies made original programs for cable operators, TCI went into the program business itself. One of its earliest and crudest attempts consisted of a camera affixed to a clattering news service wire; on another channel, a camera panned back and forth among a thermometer, a barometer and a wind gauge. "Those were our all-news and all-weather channels," joked Paul O'Brien, a longtime TCI director.

TCI's chief executive, John Malone, 51, gave up a promising corporate career in New York (he worked for AT&T, among others) to join Magness at TCI in 1972, when TCI was still struggling for survival. Malone hardly seemed the entrepreneurial type: The son of a General Electric Co. executive who spent a comfortable childhood in Connecticut, Malone came to TCI with two undergraduate degrees from Yale, master's degrees from Johns Hopkins and New York University and a doctorate in operations research (a combination of math and engineering) from Johns Hopkins. To this day, people at TCI refer to him as Dr. Malone; Magness is just plain Bob.

The relationship between Malone and Magness is described by insiders as highly collegial and, inevitably, as like that of a father and son.

In the early days of their collaboration, Magness and Malone were faced constantly with foreclosure from anxious lenders. As a result, they got a reputation for driving tough bargains with the local governments that oversaw TCI's local systems. When the city of Vail, Colo., refused to approve TCI's request for a rate increase, for example, TCI cut off service one weekend and ran the names and phone numbers of city officials on the screen. The city eventually backed down.

In 1982, officials in Jefferson City, Mo., voted to replace TCI with another cable company. TCI, however, was able to persuade officials to reverse the decision. The other company then sued, charging that TCI had unlawfully interfered by threatening to cut off service to customers and by withholding franchise fees that it owed to the city.

In testimony introduced into the court record of the suit, a TCI executive was quoted as threatening a city consultant: "We know where you live, where your office is and who you owe money to. . . . We are having your house watched and we are going to use this information to destroy you. You made a big mistake messing with TCI. We are the largest cable company around."

TCI now condemns the threatening statements, saying they were "unauthorized."

Nevertheless, an appeals court, condemning its "excessive and intimidating conduct," upheld a jury award of $45 million in damages against TCI in 1986. The company has paid up.

In recent years, TCI has been criticized by local officials around the country for providing indifferent customer service. Although several officials now say TCI has improved its record considerably, customers of its cable system in Washington may feel differently. District Cablevision received 13,000 complaints about billing problems, missed service appointments and poor reception during a four-month period last year, records show. That means one in six customers complained in that period.

TCI also brought some unwelcome publicity to itself last June when it introduced a new pay-movie channel called Encore. The service generated controversy because TCI had planned to charge customers for it unless they specifically told the company they didn't want to receive it, a marketing method some critics labeled deceptive. Under pressure from attorneys general in several states, TCI changed the way it sold Encore.

"These are entrepreneurs who built this company despite years of unfavorable" conditions, said the chief executive of another major cable company, who requested his name not to be used. Said the executive, "There is a Western, almost cowboy mentality surrounding that company."—PAUL FARHI.

[From the Washington Post, Jan. 24, 1992]

FIGHTING FOR A LEADING EDGE ON THE FUTURE

(By Paul Farhi)

Jack Jakubik's television set is a futurist's dream. With only a few touches of a remote control keypad, Jakubik can have his pick of several dozen first-run movies, exercise videos or instructional tapes—a mini-video store right in his living room.

Or, with the flick of a button, he can turn his set into a video phone. A camera and microphone mounted on the set allow him to see a similarly equipped caller at the other end of the line, and vice versa. "I've been spoiled by this technology," said Jakubik, a 49-year-old manufacturers' agent. "I wouldn't want to go back to the old way."

Jakubik's home in the Southern California community of Cerritos is one of a handful in the nation equipped with such an experimental telecommunications hookup, installed by a telephone company, GTE Corp. But his TV set is more than gee-whiz, state-of-the-art technology.

It represents the determination of the telephone industry to play the leading role in the next generation of the electronic age, one in which video programs, phone calls, electronic shopping services, computer data and other information would be brought into and out of the home over high-capacity "optical-fiber" transmission lines.

Because a single fiber-optic cable can carry many times the electronic information contained in the typical copper telephone line, customers would have video access to classrooms, shops and doctors. Fiber-optic cable would put the contents of whole libraries at their fingertips and make thousands of movies and TV shows a mere click away. "Tele-commuting"—working or learning at home—could become common.

That, at least, is the vision of the future being promoted by the nation's phone companies, which would like to install and control this super conduit and the billions of dollars in revenue it may someday generate. They have taken dead aim at replacing another industry whose transmission lines already enter America's households—the cable TV business.

For now, GTE and other phone companies are barred by federal law from offering TV service in areas where they are the monopoly providers of local phone service. But the industry is moving closer to realizing its goal. In early October, a federal court cleared away legal prohibitions that had kept the seven giant Bell companies created by the breakup of AT&T from owning and marketing "information services"—everything from audio horoscopes to computer databases—over their local phone networks.

The court effectively decided that the Bell companies could sell everything that a fiber-optic network would make possible, with one exception: television programs and other video services, the very ones the Bell companies say they need to justify the enormous investment needed to put fiber-optic lines into homes.

Now, the Baby Bells are pushing Congress to repeal a portion of the 1984 Cable Communications Policy Act, the law that contains a provision prohibiting them from being in the TV business.

POLITICAL BATTLE

The race to control tomorrow's television and telecommunications businesses has set off a classic political battle in Washington. Although some in the phone industry have begun to talk about joint ventures with their cable counterparts, the phone companies' ambitions have thus far been opposed by virtually every media and information lobby in Washington. And none has more to lose than the cable industry, which has spent billions of dollars over the past three decades to string copper cables past most American homes.

"If you put the [telephone companies] into the TV business, there has to be substantial question how long the cable companies would last," said one congressman, a leading policy maker on telecommunication issues, who asked not to be identified. "It's highly unlikely that there will be two wires running down every street delivering competitive video programming."

The cable industry is promoting a far different vision of the future. In a piece of video lobbying circulated to state officials, consumer groups and some members of Congress last summer by the National Cable television Association, former TV anchorman Edwin Newman extols the advantages of a "multi-wire" world in which direct-broadcast TV satellites, cellular phones, multimedia computer software and, not incidentally, cable TV coexist. This, intones Newman, "is the future the Bell companies fear most—booming, buzzing competition."

The Bush administration has come out strongly in favor of allowing the phone companies to provide TV service, saying it would stimulate price competition in the cable industry and speed the installation of household fiber-optic network. The Republican-dominated Federal Communications Commission has also taken up consideration of a proposal to permit phone companies to provide TV service, but not to own the programming itself.

"The cable industry isn't subject to any effective competition right now," said Ronald Stowe, who heads Pacific Telesis Group's Washington office. "They will do a lot better job in terms of service and programming if they are subject to competition. If they knew we were coming, they would take amazing steps to clean up their acts."

Even if the regulatory roadblocks were lifted, the phone companies still face the daunting task of replacing their existing copper-wire networks with fiber-optic lines like those in Jakubik's home.

That job is already underway, albeit slowly. Local phone companies are gradually installing fiber-optic lines where copper lines have worn out. At its current pace, a nationwide replacement of the cooper lines will take another 40 years, said Raymond Smith, chief executive of Bell Atlantic Corp. Smith believes the job could begin in earnest during the 1990s and be done by the year 2010 if the phone industry had the proper financial incentives—that is, the right to sell video programming.

The technology to create the new super network has been around for about 20 years. Fiber-optic technology can convert pictures, voice or text into computerized signals and send them as pulses of light along tiny strands of flexible, ultra-pure glass. Fiber cables are already widely used by the phone industry to transmit phone conversations and computer data through central lines.

By extending optical fiber into the home and combining it with the phone companies' sophisticated switching systems, every household could become part of an unprecedented "age of knowledge," say the most ardent believers in this technology.

A fiber-optic network "will change the way people run their lives," said Bell Atlantic's Smith. "It will give them more control over their [work] and provide solutions for some of their problems."

The phone companies are pinning their hopes on a bill sponsored in the Senate by Conrad Burns (R-Mont.) and Albert Gore Jr. (D-Tenn.), and a similar bill in the House sponsored by Reps. Rick Boucher (D-Va.) and Mike Oxley (R-Ohio), that would phase out the ban on telephone companies and allow them to sell TV services in exchange for building a national fiber-optic network.

COMPETITION AND COST

Yet several key questions surround the phone companies' dreams:

First, would the phone companies dominate access to, and use of, their fiber-optic network, serving as "super-censors" of the companies that want to sell services over them? The phone companies would be marketing their own programs and services, after all, it's feared this would give them the incentive to harm competing marketers.

The Burns-Gore bill would impose severe penalties on phone companies that discriminate against a competitor who wants a spot on the fiber-optic network. But consumer groups are suspicious, saying that it would take an army of bureaucrats to make sure any safeguards were enforced.

Second, critics ask whether it is necessary for every home to have so vast an information conduit, especially since existing communications devices already fill some of the most important needs. Proponents say a single fiber wire will eventually be more efficient and economical than other combinations of technologies, and new, unimagined services will develop as the network becomes available, much as a shopping mall attracts new kinds of retail stores. But the critics say putting a fiber-optic line into every home is excessive, like replacing every residential driveway with a superhighway.

"The difficulty is that there isn't a clear market for the kinds of services people are starting to imagine" for fiber optics, said Leland Johnson, a Rand Corp. economist who has studied the impact of fiber optics on consumers. "Do people really want video phones? Do they want [instantaneous] access to movies at 3 in the morning?

Finally, and perhaps most important, is the cost question: How would the phone industry finance the cost of hooking up every home, given that the job could cost anywhere from $200 billion to $400 billion? The industry says permitting it to sell TV programs and other video services to subscribers would "prime the pump," giving it enough of a revenue stream to help it complete the network. And, it's argued, as equipment purchases grow, the unit cost is likely to decline.

Nevertheless, opponents charge that the telephone industry would pass the bill on to their captive local phone customers, driving up everyone's phone bill. Although the bills being considered in Congress would impose severe penalties for such "cross-subsidies," the cable TV association and other cite recent instances in which the Baby Bells have used revenue from their regulated phone business to fund other activities—including the cost of lobbying.

To fight the battle, the National Cable Television Association has been building fitful political alliances with some of its bitterest enemies—broadcasters, consumer groups and newspaper publishers. Broadcasters fear the phone companies as another competitor for TV ad dollars and audiences, as do newspaper publishers (such as The Washington Post Co., a major cable-system owner), who are afraid the phone industry will offer video "newspapers" and sophisticated electronic classified ads over a fiber-optic network.

And consumer groups, which have savaged cable operators in the past as "price gougers" have also reluctantly cast their lot with the cable industry by opposing relaxation of the current restrictions on the phone industry. The American Association of Retired Persons and the Consumer Federation of America, for example, endorsed the cable TV association's video attack on the phone industry.

The cable TV association's strategy of playing all sides against one another is tricky, but some believe it just might work. "It's a lot easier to block things in this town than it is to change things," said FCC Chairman Alfred C. Sikes.

Sikes is pushing the FCC to adopt his "video dial-tone" proposal, a measure that envisions the phone companies as builders and operators of TV-transmission facilities that could be leased by all comers.

While the debate rages, cable companies are touting their own experiments with fiber optics. By adding signal-squeezing digital "compression" technology and installing fiber-optic lines in the main trunks of a cable system—thereby avoiding the huge expense of wiring every home—cable systems in a few years could be outfitted to offer as many as 400 or 500 channels of service, some say.

Tele-Communications Inc. (TCI), the world's largest cable company, has announced an ambitious program to rebuild the central portion of its aging cable systems with fiber-optic lines that will improve the reliability of its systems. With fiber optics and compression, TCI would like to outfit its systems to provide "video on demand," the instant pay-per-view movie ordering service that Jack Jakubik enjoys now (a "near" video-on-demand system, featuring 56 channels of pay-per-view, was recently switched on by Time Warner Inc. in Queens, N.Y., using a hybrid of fiber optic and coaxial lines).

TCI officials have told Wall Street analysts that video-on-demand services offered by cable operators will grab as much as one-third of the $15 billion in business now generated by video stores within seven years.

Several cable companies are responding to the phone industry's encroachment with a "Pac-Man strategy": turning around and attempting to start local phone service through "personal communications networks" (PCNs).

Like cellular phone networks, PCNs transmit conversations through radio transmission, but the phones would be cheaper and have clearer sound than existing cellular phone systems. The technology still isn't proven, but several cable companies, including TCI and The Washington Post Co., have obtained experimental licenses from the FCC to see whether some of their local cable systems can be outfitted with a series of antennas to create an alternative phone network.

PCNs would complement the wire networks owned by the phone companies, said Tom Elliot, TCI's vice president of engineering and technology.

TCI is already in the phone business through "alternative access networks" it has built in Denver, Chicago and Seattle. These networks provide limited transmission of voice, text and video between, say, a group of office buildings or schools.

To become full-fledged phone-service providers, however, the cable industry will need Congress to repeal restrictions that keep cable companies out of that business.

If that happens, cable operators "will be able to compete with the phone industry faster than we could compete with them," said Dave Bohmer, senior vice president of Chicago-based Centel Corp., which operates telephone and cellular systems in several states. "They could build [PCN] facilities faster than we could build" local cable systems.

These technological, political and economic factors are leading some observers to conclude that the telecommunications future belongs not to the phone industry nor to the cable industry alone, but to an alliance of both. Already, the would-be adversaries are pooling resources in foreign markets that permit the two giant industries to join.

Last month, US West Inc., a regional phone company based in Englewood, Colo., and TCI merged their cable and phone operations in Great Britain. Such an approach here, of course, is likely to anger TV broadcasters, newspaper publishers and other industries that fear discrimination by a duopoly of phone and cable companies.

BELL ATLANTIC'S MOVES

Among the most aggressive companies in establishing cable ties has been Bell Atlantic, the owner of the Washington area's Chesapeake & Potomac Telephone Cos.

In an experimental joint venture with Washington-based Benchmark Communications, Bell Atlantic has installed fiber-optic main lines in Benchmark's cable system in Loudoun County. Subscribers to that system will someday be able to order pay-per-view programs and see them almost instantaneously, according to Bell Atlantic. They also eventually will be able to watch one channel while calling up a small image of another channel in a portion of the screen.

In addition, Bell Atlantic built the cable system in Washington and leases the wires and hardware to District Cablevision Inc., the TCI-owned partnership that holds the franchise with the city. It is also in a joint venture with TCI and Time Warner and fellow Baby Bell Ameritech Corp. to build a pay-television service in New Zealand.

"If you look ahead [at telecommunications] with enough vision," TCI's Elliot said, "it's fair to say we see the lines blurring" between phone and cable companies.

TELEVISION TECHNOLOGIES OF THE PRESENT

Hard Wire: Programming is sent to cable company from various sources, where it is converted and retransmitted to subscribes through cooper cable. Most systems offer about 35 channels; 54 million households subscribe.

Wireless—Multiple-Channel Microwave Distribution System: Programming from satellite is received by microwave or "wireless" cable company and retransmitted by microwave beam directly to 400,000 subscribes.

AND THE FUTURE

High-powered DBS—Direct Broadcast Satellite: Programming is transmitted via high-frequency electronic signals directly to homes with a low-cost receiving dish or plate 12" to 18" across. Channel capacity uncertain.

Video Dial-Tone: Programming is sent to home via phone company's fiber-optic telephone lines, which also carry telephone calls and other data such as computer transmissions. Households would be connected like current telephone networks, allowing individuals to send video images to one another. Could transmit hundreds of channels, but it is not yet clear who would provide programming under this proposed system.

[From the Washington Post, Jan. 24, 1992]

CABLE VS. PHONE COMPANIES: THE BIGGER WAR CHEST MAY WIN

In the debate over television's future, the telephone and cable TV industries will field two of the most effective—and richest—lobbies in Washington.

Measured by the size of its political contributions, the telephone industry ranks with the defense, tobacco and oil lobbies. Political action committees (PACs) connected with GTE Corp., Contel Corp., and two Baby Bells—US West Inc., and Pacific Telesis Group—were among the 50 largest corporate contributors to federal candidates in 1989 and 1990. Collectively, these four companies gave $1.2 million to candidates during those years.

The seven Bell companies demonstrated their reach in 1990 with a massive ad campaign designed to stir public support for removing legal restrictions that had kept the companies from providing electronic "information services" over their monopoly phone lines. The restriction was eventually lifted by a federal court in October.

The Bells count among their allies Sen. Albert Gore Jr. (D-Tenn.), a member of the Senate Commerce Committee. Gore received at least $82,500 from telephone company sources during his 1988 presidential campaign, including contribution from political action groups set up by BellSouth Corp., Bell Atlantic Corp., Pacific Telesis and Nynex Corp., according to Federal Election Commission records.

Gore has been antagonistic toward the cable industry, signing up as a cosponsor of a Senate bill to reregulate many aspects of the business, including subscriber rates. (The bill is headed for a showdown in the Senate next week.) Gore said his political views on the issue have been shaped in part by the interests of constituents who receive TV via home satellite-dish systems, a technological competitor to cable.

But cable companies have proven that they are not political lightweights. Led by the National Cable Television Association (NCTA), cable TV interests have repeatedly beaten attempts to undo the deregulatory provisions of the Cable Communications Policy Act of 1984, which freed cable companies to set their own rates and helped make the industry into a $20 billion-a-year behemoth.

The NCTA, which says it spends $14 million a year on lobbying, administration and other activities, raised an addition $10 million from its members last year for an advertising and public-relations blitz to enhance its image and counter complaints that local cable companies provide poor service at exorbitant rates. The campaign's slogan: "Cable contributes to life."

Cable has some powerful friends on Capitol Hill as well. In the fall of 1990, Sen. Timothy E. Wirth (D-Colo.), whose state is home to the country's largest cable company, Tele-Communications Inc. (TCI) effectively killed a bill that would have partially reregulated the rates charged by cable system owners. (Wirth tied up the bill while he and Gore argued over language in a portion on the legislation.) Wirth's actions came five months after a cable-industry fund-raiser in Washington raised more than $80,000 in campaign contributions for Wirth, who was not up for reelection.

Federal Election Commission records show that the NCTA's PAC gave $548,000 to 153 congressional candidates in 1990, making the organization the 20th-largest contributor among all trade associations. The National Association of Broadcasters, which often opposes the cable group's political agenda, was 31st among the trade groups, at $277,000 in contributions.

Wirth, who as a House member in 1984 helped write legislation that deregulated cable rates, received $6,000 from the NCTA's PAC in 1989 and 1990. He also had received contributions from such cable industry heavyweights as Time Warner Inc., Turner Broadcasting System Inc. and Viacom International Inc., the owner of the MTV, Nickel-odeon and VH-1 cable channels.

TCI has been among the most aggressive of political contributors. The corporation's PAC and a subsidiary PAC disbursed $171,276 to candidates for federal office in the 1989-90 period. Top executives, such as Chairman Bob Magness, President John Malone and Executive Vice President Larry Romrell, gave another $61,390. Wirth and Colorado's other senator, Hank Brown, a freshman Republican, each received $10,000.

Wirth said the contributions he has received from cable companies are "natural" because TCI and other major firms in the industry are headquartered in his home state.

"I represent the cable industry," he said. "These are constituents of mine. They're a major employer in Colorado, and it's my job to represent them. I'm doing the appropriate thing, just like Mitchell represents the fishing industry or Dole represents the corn industry," Wirth said, referring to Senate Majority Leader George Mitchell of Maine and Minority Leader Robert Dole of Kansas.—PAUL FARHI.

GROUPS ENDORSING S. 12

National Association of Broadcasters.
Association of Independent Stations.
Consumer Federation of America.
National Consumers League.
Consumers Union.
National Religious Broadcasters.
American Association of Retired Persons.
National Council of Senior Citizens.
International Brotherhood of Electrical Workers.
National Association of Broadcasters.
Food & Allied Service Traders.
International Ladies' Garment Workers.
National Association of Broadcast Employees and Technicians.
Communications Workers of America.
National Rural Electric Cooperative Association, and Wireless Cable Association.
United Auto Workers.

Mr. GORE addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. GORE. Mr. President, I would like to commend my colleague, the Senator from Missouri, on the excellent statement he has just made and on the leadership he has provided in bringing this bill forward. I have had the privilege to work with him for a number of years on the Commerce Committee and for a number of years on this particular issue.

Indeed, this is a bipartisan bill that is being brought to the floor. It has been the pending committee proposal for nearly 2 years now, and it has been ready for floor action for 8 months. And it is bipartisan. It represents a consensus among those on the Commerce Committee and many others in the Senate who have looked at this developing problem in the marketplace.

I also want to share in the sentiments just expressed by my colleague with regard to this so-called substitute that we have heard will be introduced. It is, as Senator DANFORTH says, not a compromise proposal but simply an effort to gut the bill. It is not complicated. There should be nobody in the Senate in any way fooled by it. I hope we can just vote it down quickly and get on with the business of passing this legislation.

Here we are once again trying to bring some sanity to the cable television marketplace, and once again we are trying to respond to the continuing and just complaints of millions of American families who have been repeatedly stunned by unfair rate increases, poor services, and virtually nonexistent competition.

Where did we get the idea in America that it was perfectly all right for some giant industry to have no competition whatsoever and no regulation whatsoever? Just point them in the direction of the consumer and go sic 'em.

Should we be surprised that they raise rates constantly as high as they can possibly raise them? Should we be surprised that when complaints about poor services come in they turn a deaf ear and do not respond? Should we be surprise that they have these abuses in the marketplace such as the tendency to shakedown the makers of television programs?

You know, the monopoly in the cable television industry is so tight now, it is very common for somebody in the creative community to come up with a new television program that it wants to put on cable and they go to the leaders of the industry, and the industry says, "You know, we would like to own a little bit of your company. If you give us some ownership in your company, then maybe we will be willing to talk to you about putting your programming on our cable systems."

That is incredible. It is a shakedown. But it is now routine as a way of doing business in the cable industry. Why? Because they have too much power.

Lord Acton is, of course, the author of the famous comment "Power corrupts, and absolute power corrupts absolutely." It is true of economic power as well as political power.

There are a lot of good people in the cable television industry. But I do not care how good somebody is, if you put that person in a situation where they have absolute power to raise rates without any fear of competition, without any fear of anybody holding them accountable, and you leave them with that temptation long enough, they will be very likely to succumb to it and start raising the rates and start the other abuses of which so many in this industry are now unfortunately guilty.

Well, since 1984, when the new law was passed which took away the competition, took away the potential for competition, took away the ability of local governments to hold these companies accountable, since that time this situation has gotten completely out of control.

As the rates have gone up, and as the complaints have mounted, people have asked their local officials, who are the ones responsible for granting the monopoly franchise, "Why, don't you do something about it?" And the local officials call in the city attorney, or the county attorney, and they say, "This is outrageous. Let's do something about it."

And do you know what the lawyers tell them? They tell them, "Unfortunately, Mr. Mayor, we used to have the power to hold them accountable, but Congress took that power away from us. We can still give a monopoly franchise but we can't protect our citizens, because Congress, in its wisdom, took away from local governments any ability to hold these companies accountable."

We had the idea 8 years ago that this would be a good thing to do. As Senator DANFORTH said so ably a few moments ago, nobody anticipated the kind of situation which has since developed. But now, when these local officials look at the horror stories unfolding in so many communities around this country, they are getting impatient.

They say to us, we ought to have the right to protect our citizens. If it is a monopoly and if there is no competition, then there has to be some way to hold them accountable.

Mr. President, there is no way to hold them accountable unless this bill passes. If this bill passes, we will introduce competition for cable television companies and, pending the arrival of competition, we will restore some ability for local governments to hold these companies accountable. No industry in this country should be in a situation where it has zero competition and zero regulation. One or the other—you pick it. One or the other. But not an absence of either. Because that leads to abuses.

Senator DANFORTH talked about the dialog about potential compromise. I was among those who worked to achieve a last minute compromise on this legislation as the Congress came to a close in 1990. Some cable leaders saw this train coming down the pike and saw the wisdom in bringing the debate to an end and worked with us to fashion a reasonable bill to send to the White House.

Now, as Senator DANFORTH also said, the White House threatens a veto. And the cable industry has taken a much more stubborn view and simply opposes any legislation. And, of course, the cable industry has a lot of political power. They wield a lot of influence. And they are using every bit of it they can muster.

For the past 4 or 5 months we have heard repeated rumors of that so-called alternative, the one that is going to be introduced as a substitute for this legislation. Only now, at the very last moment, have we been handed a proposal by those who have fought so long and hard against meaningful cable legislation. We still do not know what is in it. It is just an excuse to gut the bill. There is no other meaning in it. There is no intention whatsoever that it pass or be—well, I should not speculate on the intention of the sponsors. I withdraw that comment.

Let me say I find it hard to believe that anybody really expects that it will become law. It is crafted primarily as a device for defeating this bill. That is the way it appears to me. And once we begin work in earnest on S. 12, later this week, I believe that our colleagues will see this so-called alternative for what it really is, just an effort to undermine the real thing.

The real relief for consumers is embodied in S. 12, the bill that is before the Senate.

Let us spend just a moment, if we could, Mr. President, to review the true state of affairs facing cable consumers. Since the committee reported this bill last May, indeed since the committee reported a similar bill nearly 2 years ago, not a single event has happened to diminish the need for this legislation. Unwarranted rate increases continue unabated. Local communities continue to have their hands tied in franchise renewal negotiations. That is one of the arguments: they do not have to renew the franchise.

Under the current law, they often have no choice but to renew the franchise. Still, cable's competitors continue to be discriminated against. The multisystem operators are taking over smaller MSO's and continuing to concentrate the industry, and the FCC has taken only token action, pitifully token action which addresses the problems of less than a third of the country's cable consumers and even then in a limited way.

Some cable spokesmen have attempted to dismiss all of these complaints arising from all over the country as simply the noise of a few competitors, a few disgruntled consumers, a few community leaders who are overly sensitive to a few constituents. Mr. President, this charade has not fooled anyone.

We all know what happens when we go back and talk to our constituents. I had an open meeting in a community in west Tennessee 3 weeks ago. Several people came, but one person came for this purpose who was especially vocal and talked about what the cable company was doing.

I was back home this past weekend and the same guy ran into me at another event in a neighboring county and he said, "You will never believe this, but in the last 3 weeks since we spoke at the townhall meeting, they have raised the rates again."

If anybody wonders why this legislation keeps on gaining strength and gaining supporters and building momentum, it is not complicated. The cable industry is making converts for this bill because the rates keep going up and because the complaints from consumers keep falling on deaf ears.

In any event, cable consumers are perfectly capable of discerning the difference between public relations campaigns and genuine action on rates and service and competition.

Earlier this year, the General Accounting Office updated its alarming survey on cable rates. In 1990, the GAO reported that rates for the most basic services, the package of channels consumers are forced to take to even get on a cable system, had increased an average of 29 percent over the study period. But more recently, after obtaining new information, the GAO found that basic rates had increased an even more dramatic 56 percent over the past 4 years.

As some of our colleagues will remember, there have been particularly outrageous examples of rate abuses in my own home State of Tennessee where the infamous MultiVision case of tyrannical rate gouging is now legendary in the industry and among those who are trying to protect consumers from this industry.

But it turns out that many communities controlled by cable MSO's, multisystem operators other than MultiVision, have also experienced unwarranted rate practices by the local monopoly operator.

Three of Tennessee's largest cities—Memphis, Nashville, and Knoxville—are communities not covered by the FCC's so—called effective competition ruling last year. In these cities, rates increased 87 percent, 98 percent, and 86 percent respectively.

What are we supposed to tell consumers experiencing rate increases like that? What are their local officials who granted the monopoly franchise supposed to tell them? That Congress passed a law stripping them of any ability to hold them accountable? And that the cable industry is too politically powerful to permit justice in rewriting that law?

I am not prepared to give people that answer. That is why I have been fighting these past few years to change the law. That is why I am supporting Senator DANFORTH with the proposal that is now brought by a bipartisan group of Senators to the floor of the Senate this week.

And, in countless smaller communities, city officials struggled with any effort possible to inject some competition into the local market, so that their constituents might be able to afford basic cable services. In most cases they were threatened with lawsuits, and the cable industry has a very deep pocket. They had the new competitive entrant bought out by the incumbent monopolist. That is very common. Or they were told by other cable operators that they would not compete with a "bad actor" because someday they might face the same competition in situations where they had the monopoly.

Indeed, just this morning the Wall Street Journal reported a front page story entitled "Cable Cabal: How Giant TCI Uses Self-Dealing Hardball to Dominate Market." The Wall Street Journal reported in that story, on the strong-arm tactics of TCI, the cable industry's biggest and most intimidating MSO, which holds the franchise in, among other places, a little town called Morganton, NC.

In that instance, TCI apparently funneled corporate money into a group that the company organized specifically for the purpose of guaranteeing that TCI would, in essence, be granted a lifetime monopoly franchise. When the company's covert activities failed, it reportedly spent $144,000 to run the mayor and an incumbent councilman out of office. The incumbents, as is the case with most local campaigns, had only a few hundred dollars to spend against $144,000 spent by this cable industry giant. But the people of Morganton were not fooled. Both of these individuals were reelected, and now TCI has shifted its tactics and is busy filing lawsuits to stop the city from building its own cable network.

Mr. President, I ask unanimous consent that at the conclusion of my remarks this Wall Street Journal article called "Cable Cabal" be printed in the RECORD.

The PRESIDING OFFICER (Mr. CONRAD). Without objection, it is so ordered.

(See exhibit 1.)

Mr. GORE. Mr. President, this is simply not a case of a natural monopoly developing out of economic realities in the local marketplace. No, this is a monopoly of a different kind. This is a legislatively created monopoly, born out of a Government-forced compulsory license to take local television programming for free and give it an overdose of anticompetitive proposals in the 1984 Cable Act.

This monopoly is manifested in so many cases that it is virtually impossible to keep up with alarming new rates and service developments.

One of the industry's favorite ways to jack up cable rates while making it appear that rate increases are modest is to suddenly introduce some brand new change. For example, they will all of a sudden say you have to start paying us for the converter boxes or you have to pay us for the remote control device, or if you hook up the same service in a second room, you have to pay us an arm and a leg for that, or we have some other brand new charge that we are going to add on to the basic charge.

Indeed, some of the most outrageous developments arise from the industry's apparent determination to move as much programming as possible to a pay-per-view basis so that what used to be basic programming that came with the monthly rate, all of a sudden anything that is especially popular that people really want to watch is on a pay per view basis. That is the trend. That is the direction they are heading in at full speed. And to add insult to consumer injury, cable operators would render the current generation of cable-ready televisions and VCR's obsolete by scrambling local signals and requiring consumers to rent a converter box to receive cable signals. Try that one on for size. The cable-ready televisions that the industry has produced.

The industry does not like that idea because they can make more money by rendering the cable-ready feature obsolete and charging a new charge to put a converter box on top of the cable-ready television, another new charge.

I am pleased that our colleague, Senator LEAHY, has addressed this issue and may offer a floor amendment to specifically outlaw that practice.

But make no mistake about it. Mr. President, if we do not act on this floor, if we do not pass this legislation, the abuses that I have been describing that our constituents have been suffering through are only the beginning because, if this industry is not held accountable, they will not, of their own initiative, show the self-discipline to start giving the consumers a break.

If we leave them in this situation where they have no competition and nobody who can hold them accountable in any way shape, or form, they will continue raising rates, continue coming up with new gimmicks to charge another arm and a leg and new ways to abuse the monopoly power that they have. Just count on it, unless we pass this legislation.

Our colleagues are fully aware of one recent notorious practice called retiering. That is a fancy word within the industry to discribe a recent cable practice which surely must have earned its industry inventor a huge bonus from corporate headquarters in Denver.

Retiering works like this: First, the cable operator who once offered a package of basic services, including local over-the-air free TV channels and typically 20 or so cable services like ESPN, MTV, USA, CNN, so on, essentialy what we have all come to know as baisc cable for average prices that was $17 a month—it varies widely across the country, but that has been the average price—but under retiering, the cable operator, worried about potential new controls on basic rate hikes, divides his current offering into a package of mostly free television channels provided by broadcasters, provided free under law, which he then charges people for, about $10 a month, and calls that basic cable; obviously, a service that only a minimum number of people want because all it includes is stuff that is available over the air anyway. In some areas where they have trouble getting a clear signal, they take those basic channels and charge much more, whatever the market will bear. That is the only tier that might potentially be regulated under the FCC rule. So this is how the scheme of retiering begins.

But here is the next step. The cable operators then creates a new expanded basic package which includes the same mostly free TV channels plus the other 20-plus channels that his subscribers really want from cable and charges $20 essentially for the exact same product but with a hefty increase compared to what was charged for the same thing before the retiering. A little sleight of hand going on there. A lot of sleight of hand going on there, taking it out of the consumers' pockets.

So in a brilliant exploitation of monopoly pricing power and loopholes, the cable operator has in one swift stroke of the corporate pen avoided what minimal regulation the FCC wants in the minority of places and created a new cash-flow at the same time.

Unless my colleagues suspect that this scenario is simply hypothetical talk, I would like to print in the RECORD an article which also appeared in the Wall Street Journal, this one 2 weeks ago, entitled "Cable-TV Firms' Higher-Priced 'Tiers' Brings Cries Of Outrage From Consumers." It was dated January 15, 1992. I ask unanimous consent that be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Jan. 15, 1992]

CABLE-TV FIRMS' HIGHER-PRICED "TIERS" BRING CRIES OF OUTRAGE FROM CONSUMERS

(By Mark Robichaux)

NEW YORK.—For the nation's cable-television operators, getting down to basics often seems something best avoided.

Keenly aware of reregulation threats and new federal rules that let more cities cap basic cable rates, cable systems have simply redefined what "basic" supposedly means. They have carved out a layer of popular channels to form a new "tier" that costs extra—and thus they effectively dodge the rules aimed at curbing price increases for basic cable.

The practice of "tiering" wasn't prevalent in late 1989, when Congress first threatened to impose new regulations on cable, just three years after it had largely deregulated the industry. But tiering had spread to almost 60% of all cable subscribers by the middle of last year. It is likely to expand even further this year.

CONSUMER COMPLAINTS

Consumer groups call it a shell game that has let cable companies blithely slap on unfair rate increases. In the past few months alone, the cable system in Los Angeles imposed a 12% increase on its most popular package, and the system here in Manhattan similarly set a 10% increase. Last March, Time Warner Inc.'s Brooklyn system formed a new tier that included MTV and CNN; nine months later, it raised the charge for the tier by 34%.

"Cash flow is the name of the game for these companies," says lawyer Nicholas Miller, who represents several cities in disputes with cable systems. "Their main concern is how do we frustrate, confuse, divide or slow down an attempt to regulate the rates."

Almost all of the nation's biggest cable companies now use tiering. They maintain that it more fairly spreads the costs of various channels among the viewers who really want them, that it lets them lower the price of pared-down basic cable and reach viewers who merely want better reception and the low-income people who otherwise couldn't afford cable. Criticism of tiering, "is pure cable-bashing that is totally unjustified," says Richard Aurelio, president of Time Warner's New York cable group.

Many cable operators, however, don't tell customers that a cheaper basic option is available. They simply switch customers over to the more expensive tiers through a "negative option" that requires subscribers to go out of their way to reject the change. In some cases, customers are penalized for switching to the lower-priced tier by having to pay an extra one-time charge.

Only a sliver of cable subscribers on tiered systems—usually well over 10%—actually buys the redefined narrow basic service. When federal investigators randomly called systems and posed as customers, they found that nine leading companies offering tiers didn't even acknowledge the existence of the lowest-priced basic tier, according to a recent report from the General Accounting Office. (Calls by a reporter to Time Warner systems in Manhattan and Brooklyn produced similar results.)

"The game for cable operators is to tell regulators that this is a separate and optional tier," says Joseph Van Eaton, a cable lawyer for several cities. "But they're telling subscribers that expanded tiers are part of basic service.

Despite cable operators' claims to the contrary, the price structure behind tiering often has little basis in reality, in terms of demand for the channels and operators' costs. For example, Time Warner's Brooklyn-Queens cable group previously charged $20.90 for 58 channels. Last March it split the dial into 24 channels for basic ($14.95) and a tier of 34 popular channels for an extra $5.95. Then it tacked on an extra $2.05 for the second tier last month, a 34% increase. Yet the tier probably costs the company only $3.52 to begin with, based on an average monthly cost of 16 cents a channel. (That average cost comes from Paul Kagan Associates, a media research concern: Time Warner's cable group declines to discuss specifics of its channel prices.)

Charging an extra $8 for the tier is "totally unjustified," asserts Bill Squadron, who oversees New York City cable systems as the city's telecommunications commissioner. "These companies are protecting unbelievably favorable market conditions—no competition and no regulation." Time Warner's Mr. Aurelio dismisses the charge as unreasonable.

STARTLING PRICE INCREASES

Just four years ago, cable companies were doing the reverse of tiering. When Congress freed cable from rate regulation by local governments, systems folded all channels and rates into one basic offering. Then they levied startling and aggressive price increases. Cable bills shot up 61% from December 1986 to July 1991.

Cable operators said the jump was needed to make up for years of artificially low rates, when local governments had refused to grant adequate fee increases. But a Justice Department report found that only about half of the rate rise was due to higher costs.

As criticism intensified, Congress began weighing new regulation but got nowhere. A bigger threat came from the Federal Communications Commission. In January 1990, the FCC announced a proposal that would vastly increase the number of communities allows to ride herd on basic cable rates.

When Congress deregulated cable in 1987, it let a handful of communities—those that had fewer than three broadcast stations in their local markets—continue to regulate local cable rates. The new FCC rule proposed to let towns with fewer than six stations control cable rates, affecting 61% of all cable systems and covering 34% of all cable subscribers in the U.S.

But the FCC didn't pass the new rule until last July—and by that time tiering had taken hold. The FCC rule also had a major loophole: It let local governments control only basic rates.

"It tends to make a mockery of the process," says Bill Johnson, deputy chief of the mass-media bureau of the FCC. "It's annoying to the consumer because what they want isn't regulated by the city."

The new FCC rule gave Laredo, Texas, new authority to control local cable rates. But in June 1990 the local cable company, Paragon Cable, split its single package of 34 channels into a basic offering of 11 and a second tier of 23 channels. Subscribers who signed up for the expended basic tier had to pay the system $15 each to change to the more limited basic service.

Three months later, the system raised the price of the second tier by 30%, from $5 to %6.50. It tacked another $2 increase on one year after that. The end result: In 15 months after Paragon imposed the tiered approach, Laredo subscribers were paying 21% more for the same 34 channels ($20.50 a month, compared with $17 when the tier was adopted in June 1990).

Paragon, a subsidiary of Kblcom Inc. in Houston, also lowered the price of its 11-channel basic offering to $7.95 a month from $12 last July, but only a small number of subscribers were affected.

Some cities are trying to fight the cable companies by seeking the right to regulate the extra tier of "expanded basic." The city of Gillette, Wyo., is in a court battle with Tele-Communciation Inc., the nation's largest cable operator.

In December 1989, Tele-Communications retiered its channels and automatically switched customers to the expanded service. It also began charging extra for items such as converter boxes and cable guides. By May 1990, a customer would have had to pay $22.20 for the same package that had cost $16.74 five months earlier, a jolting 33% increase.

Outraged, the city passed an ordinance that set the price for basic service at $12.80 and set expanded basic at $13.20. Tele-Communications refused to lower the price, and the city filed suit. In November, a federal judge ruled that the city had the authority to set only "basic rates." Now Gillette is pursuing a second argument, that TCI's "expanded basic" tier isn't really a distinct and separate product from basic service. (TCI officials declined to comment on the situation in Gillette.)

Tiering has also triggered resentment among newer cable channels, which fear a loss of distribution if they are placed on tiers with pay services.

Bills now in Congress address tiering, but if Congress regulates every level of service, "it will freeze the development of new programming," contends Steve Effros, president of the Community Antenna Television Association, a cable trade group. He says proposed laws aimed at tiers would put artificial price caps on channels. "We are finding our price levels now," he says.

Mr. GORE. Mr. President, there is another reason why the rates are going up so rapidly. When you have this monopoly situation, it is so tempting for people to get in there and take advantage of it that some unscrupulous operators have begun to use the junk bonds to bid up the price of the cable television companies and take them over.

The original operators who might have negotiated with the community, might even in some cases have established good business ties with people in the community and be subject to some community pressure if they want to continue being honored members of the community, are bought out by people who see the financial opportunity that the monopoly makes possible and they use these junk bonds to buy them.

The interest rate on the junk bonds is very high. How are they going to pay the interest on the money they have borrowed to buy the cable system at an inflated price? Three guesses, Mr. President. Raise rates, No. 1. Then raise rates again, No. 2. And then raise rates again, No. 3.

That is so they can finance the interest on the junk bonds. If they do not raise rates, they cannot pay the interest. So they raise rates. And people complain. They say, "Too bad. There is nothing you can do about it because Congress, 'in its wisdom,' took away the ability of local communities to hold the company accountable."

We have outlawed the only potential competition that they might face.

We have required by law that the raw material of their basic over-the-air programming be given to them for free.

Pretty sweet deal if you can get it. You can get it. Get some junk bonds, pay the high interest rates, and raise the cable rates to finance it. The lesson has not been lost on many who are buying into this industry now. But the cable industry just cavalierly dismisses public concern, and that retiering scheme that I mentioned a minute ago is only one of many such schemes.

Only 2 months ago, Consumer Reports, one of the most credible analysts of consumer problems, completed and released its survey of more than 200,000 cable consumers. While the 1990 and 1991 GAO reports that I mentioned a moment ago confirm the issue of rate abuses, the Consumer Reports survey reported alarming facts about the quality of cable service. For instance, 25 percent of all cable customers are dissatisfied with their cable service; as many as 40 percent in Chicago, for instance, and there are other examples of where the number is very high.

Do you know what would happen in a normal business if 25 percent of all the customers or 45 percent of all the customers were dissatisfied with the service a company was providing? They would go to the competition. The company would know they were about to do that, and so they would clean up their act and they would provide better service. That is why competition works.

But since it is a monopoly, they do not have any competition, and so they do not care. They will claim they care, and they will try to remain just short of the gag level. But they want to raise those rates, and they do not want to spend money to hire more people to take care of the service problems, because that is money out of the monopolist's pocket that he knows he does not have to spend.

The monopolists know there is one thing that could happen which would change that. If this bill passed, then they would be held accountable. They would have to listen to people's complaints. They would have to worry about competition—horrors. Competition. They would have to worry about being held accountable for the lack of service and the constant rate increases.

Here is another fact from the Consumer Reports survey: 35 percent of Americans surveyed report that the company providing them cable television does not provide sufficient information about billing and service; 43 percent note that it is extremely difficult to even reach the cable company.

My constituents tell me a very common experience is to get a bill in the mail and have a charge on it that is just wrong; it is outrageously high. They naturally feel some anger, but they think: "I will call them and talk to them about it and try to straighten this out." Ring, ring, ring, ad nauseam; they do not answer the telephone. They do not care. They do not have to care.

In August, the Justice Department released an official report entitled "Market Power and Price Increases for Basic Cable Service Since Deregulation." The Justice Department study reports:

> At least 45 to 50 percent of the price increase since deregulation is due to market power.

We used to care about monopoly power in this country. I know that with some people, it has become unfashionable to worry about such a thing. But I tell you, consumers who are paying these rate hikes are fed up. Local officials who are getting the brunt of the complaints from consumers and who look at the law and find out Congress has stripped away their ability to do anything are getting fed up. Small entrepreneurs who organize to compete with the cable company and who are squashed by the economic power of the industry are getting fed up. They are all calling on us to act and do something about it. Are we going to get rolled by the power of the cable industry?

I think we have the votes to pass this bill. I hope the President does not veto this bill. It is an election year, last I checked. The President may be interested in that. He may be increasingly interested in that. This is not a partisan battle. It is certainly not partisan in the Senate. But it could have partisan overtones, I will say in advance to the White House, if a bipartisan majority in the Congress passes this and then the President of the United States vetoes it. I do not want it to be partisan. I would like to see it pass in a bipartisan way.

But the White House surely ought to understand that when the President goes to New Hampshire and says, "I care about you; believe me, I care about you. I know what tough economic problems you have"—I could hear the conviction in his voice. If he vetoes this bill, some people are are going to remember that, and the next time he says it, they are going to wonder. So maybe he will have a change of heart. I certainly hope so.

I encourage the President to pay attention to the Republican Members of this Chamber who have been out there with the people, along with the Democratic Members of this Chamber, who have been fighting on the right side of this cable issue and who have heard the voice of the people and who have been demonstrating that they do care about these rate increases. Frankly, given the White House efforts to kill this legislation in the last Congress and then again late last year, I am surprised this Justice Department report I referred to a moment ago was allowed to see the light of day, but here it is, one more example of why the Senate must pass S. 12.

Again, what the Justice Department is saying—and remember, the Bush Justice Department is not exactly a haven for regulation advocates—is that these huge cable rate increases are not mostly due to increased costs, not mostly due to investment in new programming, not mostly due to service improvements. Rather, these rate hikes are mostly due to cable's monopoly power. That is what the Bush Justice Department says after conducting an in-depth study. Are we going to respond or are we going to get rolled?

We are going to respond, Mr. President. That is my prediction. I hope the White House responds, too.

Much of the stated objection to this bill is based on the contention that a return to the pre-1984 days, when every community had substantial control over rates and service, would stifle new programming and become a regulatory nightmare. The fact is that this legislation hardly represents a rollback to preregulation days.

Those of us who have long been involved with this issue like to believe we understand the basis for the concern being expressed there, and that is why the bill Senator DANFORTH brings to the floor does not turn the clock back.

It turns the clock forward. It incorporates the legitimate lessons of what was going on before the 1984 act. This is a step forward, not backward. It is an innovative bill. There is no mandatory regulation in this bill at all. In fact, communities satisfied with their local cable operator would be free to continue hands-off supervision of rates and service if that is what they chose to do. Only those communities with egregious cable abuses would feel compelled to impose any rate regulation, and premium services would be exempted from any regulation at all.

Is there an alternative to rate regulation? Of course, there is. And we have been talking about it here today. A better approach is competition, competition from other technologies—C-band and new direct broadcast satellite dishes, wireless cable, other cable systems, and from the telephone companies, who should be encouraged to provide superior fiber-optic cable services to every home in this country.

But in the case of C-band, satellite dishes, and wireless cable programs, distributors are often charged prices that are many times greater than cable. The FCC itself has clearly stated this fact in its finding last May.

In its report on discrimination by satellite carriers, the FCC made the following statement. And, again, let me parenthetically make the point that this is the FCC appointed by President Bush after carefully studying this aspect of the problem. The FCC flatly stated:

> Home satellite dish distributors are paying much higher rates for superstation and network station programming than are other entities, such as cable systems operators.

They went on to state:

> * * * the disparities and prices charged by some satellite carriers in some cases are not justified by the differences in the cost of providing service.

Chairman Sikes went on record to say of this report:

> We will provide it to Congress. I think that they will be troubled by some of the unwarranted price discrimination, and we'll see what steps are taken thereafter.

The Justice Department, the FCC—what more evidence do we need to reach a conclusion that this is an industry out of control where its abuse of consumers is concerned?

I say to the present occupant of the chair, who represents a State with a great many rural areas, as the State of Tennessee has a great many rural areas: When people who cannot get cable, are far even from broadcasting stations, invest in a satellite dish and the service to get the signal, they are willing to pay a fair price set by market pressures for the programming that they watch. Why do the programmers charge satellite-dish owners many times the rate that they charge to cable systems? Why is that?

It is really not that complicated. The cable industry owns the programmers for the most part and the ones they do not own they do their best to control, just as they shakedown new programmers and force them to cough up part of the ownership of the company before they will even consider putting the programming on cable systems.

Woe to the programmer who has the temerity to sell his or her signal to a satellite dish owner at market rates. You know what happens? The cable industry visits them, and they say, "We understand you have been doing business with satellite dish owners. Is that right?" And if they say, "Yes," then the cable industry says, in effect, "We are sorry to hear that. You would like to remain on our cable systems, would you not? That is where 90 percent of your revenue comes. You know we have a lot of programmers who would like to take your place on our systems and they are not selling to the satellite dish people at market rates. We hope you will reconsider." And they do. They reconsider. They raise the rates to satellite dish owners.

They did not use to sell at all to satellite dishowners for the same reasons until Congress put so much pressure on them it got so embarrassing to the industry they finally said, "We cannot just refuse to sell it. But let us make sure that the rates are so high that nobody will ever be encouraged to get a satellite dish instead of a cable system."

That is abusive. Come on. Are we going to stand here and let this kind of abusive business practice continue in this country and do nothing about it just because this industry has so much political power that it is able to yank chains, push buttons, get its way? We represent the people of this country. We see a clear record of abuse. We have documented it up one side and down the other.

Mr. DANFORTH. Mr. President, will the Senator yield for a question?

Mr. GORE. I am happy and proud to yield.

Mr. DANFORTH. Mr. President, I want to compliment the Senator from Tennessee for putting in the RECORD the front page article from the Wall Street Journal of today. The Wall Street Journal is not exactly an advocate for big government or for excessive governmental regulation. Yet, as the Senator has pointed out, the headline of the article is: "Cable Cabal. How Giant TCI Uses Self-Dealing, Hardball To Dominate Market. Top Officers Are Enriched as Firm Buys Up Systems and Blocks TV Rivals. Who Owns What in Utah?"

My question to the Senator from Tennessee is: Does this article surprise the Senator? Or, instead, is the kind of abusiveness which is documented in this lengthy article in today's Wall Street Journal, and is the kind of abusiveness which the Senator has so ably described in his presentation to the Senate, a natural result of monopoly power? Is this not exactly what we would expect from an unregulated monopoly? They can do anything they please.

Mr. GORE. I say, in response to my able colleague, that, first, I am not surprised by the findings reported in the Wall Street Journal today. My colleague and I participated in a number of hearings over the years in which similar examples have been brought to our attention. Some of the ones reported in this story are news to me. But the basic practices reported here are one which have been documented by many who have studied this industry over the years.

And, then, in response to the second part of my colleague's question, I say, yes, the abuses that are described are, in my opinion, a natural and expected consequence of sustained monopoly power in the absence of any accountability, any checks, any constraints that would otherwise hold back the tendency to just keep on abusing the consumers every time you need more money.

Mr. DANFORTH. Well, the theory of the legislation is that unregulated monopolies are wrong. That is the basic theory behind this legislation. We do not want unregulated monopolies. We would rather have competition. We would welcome competition. The regulation under this legislation will expire if there is effective competition.

However, if there is no effective competition, then we should not have unregulated monopolies; is that not the basic concept?

Mr. GORE. That is the basic concept. And I make another point in response to the question.

The cable industry fears competition much more than they fear regulation. It is interesting that the so-called substitute, the alternative designed to gut the bill, is aimed at stripping away any measure that would foster competition.

Later, during the debate this week, I will offer extensive statistics and evidence on program pricing activities of cable and programmers that will show ongoing discrimination against all of the competing technologies, during the debate on the Packwood-Stevens alternative which, again, is designed principally to gut program access protections.

I would agree with my colleague that competition is preferable to regulation, and that is why—for the same reason we believe it is preferable, because it is more effective at protecting the consumers, the industry fears that even more than giving local communities some way to hold them accountable directly.

Mr. DANFORTH. There is also a problem today with respect to vertical integration, and with respect to the ability of a cable television company to either favor or disfavor a programmer without any restraints, and the legislation is designed to address that issue, is it not?

Mr. GORE. Yes, it is. In fact, vertical integration is an economic phrase that is intended to describe a situation I was getting at earlier when I talked about programmers being owned by cable companies; because in that situation, if the programmer wants to do business with a competitor to the cable company, then that does not happen, because of vertical integration. The ownership gives sufficient control to cut off the access of a competitor to the programming which is the raw material of this industry. And it is in those areas that really the worst abuses have occurred.

Let me give you an example: The National Broadcasting Co., NBC, one of the three principal television networks, decided that it wanted to develop a cable news channel to compete with CNN. I happen to be a big fan of CNN, but I am also a big fan of competition, and if somebody wants to compete with them, fine. But NBC ran into something more powerful than they had bargained for, because CNN is partly owned by the cable industry generally, and they do not want competition for CNN. And so they told NBC: we do not think you ought to compete with CNN, and if you decide to put this new channel on the cable systems, you may just find that none of us will carry your new channel. That would be a shame, would it not?

And NBC concluded, yes, that would be a shame, so maybe we ought to rethink this proposition. Do you know what they did? They said: we are going to change our proposal. We are not going to compete with CNN. We are going to make it a financial and consumer news channel, and we promise the cable industry that we will not compete with the programming service that you own. And only after making that promise, were they allowed to get onto the cable systems of this country.

That is an example of vertical integration that works against competition.

Mr. DANFORTH. I think one point that really has to be underscored is that, while much of our attention has been focused on the abuses of the cable companies against consumers, the abuses have also gone against other companies in the television industry. We are all familiar, in talking to our constituents, about rapid increases in cable rates caused by the monopoly power of the cable company. We also know about the cable companies that do not bother to answer the phone. We also know about deteriorating service.

But one of the interesting things about today's Wall Street Journal article is its documentation of cases of abuse by one cable company, TCI, against other businesses in the television industry. There is a story, for example, that is documented, that TCI wanted to purchase the learning channel. There was other competition for purchase of the learning channel, so TCI decided that the best way to pick up the learning channel was to reduce the value of it by simply dropping it on TCI's cable systems.

So one-third of the business of the learning channel disappears by command of TCI. The learning channel's value goes down; the learning channel is picked up by TCI.

This kind of abusiveness is not characteristic of a competitive industry. This is a manipulation of the marketplace. So for those who say, well, we want market forces to operate, that is the basic economic system we have, not Government regulation, but market forces. The fact of the matter is that market forces are not operating in the cable industry today.

Mr. GORE. Well, that is certainly true. Before I finish my opening statement here. I did want to comment on this last statement.

In connection with that example involving CNBC, I left one detail out. TCI, which had organized the shakedown of NBC to force them to reconstitute their programming on CNBC, TCI also said to NBC: There is one other thing before even your new programming will be allowed on cable. We would like $20 million in cold, hard cash. We have this worthless transponder company called Tempo that we have not been able to unload on anybody. Do you think you would like to buy that?

They said: Yes, we have just been wanting to buy Tempo, and $20 million sounds like a good, fair price, yes, sir. And they forked over the money, and the reconstituted programming then went on the cable systems.

Mr. President, the examples of anticompetitive abuses that Senator DANFORTH and I have just been talking about have been documented in more than a dozen hearings before the Senate Commerce Committee alone. The record of anticompetitive abuse goes much, much deeper.

Last year, one of the industry's top spokesmen was asked if cable had any competition, and he said, paraphrasing: "Of course we do. For instance, the new high-powered direct broadcast satellites [DBS] that will compete directly with local cable." Maybe you have heard about this new development, Mr. President. Little bitty dishes that you can put out on your window ledge, 100 channels, new satellite technology, very exciting, very promising, especially in the rural areas that do not have a good alternative.

Well, it is a fact that the new DBS satellite services can offer a real competitive alternative to cable, but these services will never get up and running if they cannot get access on fair terms to programming. And, again, that is where this problem comes in.

If all the programs are held under the thumbs of the cable industry and they are told that they should not even consider giving the programming to these new direct broadcast satellites, then that new industry will never get started. And these programming companies are already gun shy. They have been visited before.

Again, Mr. President, I am not creating a hypothetical case of cable stifling potential competition. Recent industry trade press reports that the National Association of Attorneys General has been investigating the plans of PrimeStar Partners, the cable MSO-controlled DBS service that has allegedly denied access to cable-owned programming to potential competitors is a case in point. A lawsuit is expected.

In other words, Mr. President, you have in this new DBS technology, with the little dishes, companies that invested money and organized to serve the public with new technology, all of a sudden find a new DBS, direct broadcast satellite company.

Who owns this new DBS company? TCI, ATC, Warner Cable, Cox Cable, Viacom, Continental Cablevision—six of the largest multisystem operators. They get the programming, and allegedly the competition that is not controlled by the cable industry cannot get the programming. They are nervous about visits, losing their business with the cable systems.

And so the cable MSO's have tirelessly worked to effectively shut down competition from traditional backyard satellite dishes. That is how I got into this whole thing to begin with, incidentally. And the deeper I looked into it, the more I found. It is just unbelievable the amount of power that this industry has accumulated and the ruthlessness with which they wield that power.

Right now, they are doing their best to shut down this legislation, because they know it is the only thing that can confront them with competition. But it is not just the satellite dishes. They shut down competition from wireless cable, from other local cable systems, as well as potential DBS services.

And the cable lobby even try to frighten cable customers by stuffing bills with untruths about the "retransmission consent" provisions of this bill. Tens of thousands of consumers received a misleading threat from the National Cable Television Association, mailed by their local cable operators, implying that the legislation would "tax you 20 percent when you watch the networks on cable." Many of my constituents questioned why their cable company was spending ratepayer money on this phony scare tactic.

Will this legislation result in a tax? Of course not. Blatantly misleading.

What else is left, Mr. President? Perhaps the telephone companies? As Garth of "Wayne's World" would say, "Not." Do not expect it.

Because, in the 1984 Cable Act, the cable industry was awarded an absolute prohibition on any competition from telephone companies. They have that one taken care of.

So, Mr. President, where is the competition? Where, even, is the potential for competition if we do not pass this legislation? The answer is, sadly, that cable's local monopoly is solid, protected by law in some cases, by extreme marketplace dominance in others.

No one would blame the cable companies and their financially dependent programming services from behaving this way—they are simply trying to maximize profits. And if they have a Government-protected monopoly to boot, so much the better.

Most of these business men and women are decent, honorable entrepreneurs who have built a remarkably profitably industry, one which has created some real benefits for society. But leave them in this situation and they are tempted to take advantage of the monopoly. And that is our fault not theirs. We ought to recognize what is going on.

Certainly, I would say the country is better off with a lot of the excellent programming that has been created. Better off with CNN on the air, with the Discovery Channel providing first-rate programming, with C-SPAN's gavel-to-gavel coverage of the Congress. Cable has done some remarkably positive things, and there are dozens of other creative program services that might never have come to traditional over-the-air television.

I believe it is time to give some credit where credit is due. I think that some of these things might not have happened if the 1984 act had not passed. But the 1984 act went ridiculously too far in creating the potential for the abuses that have in fact now come to pass.

It is our responsibility—that of the Senate, the entire Congress, the Federal Communications Commission—to change these laws which prevent competition, to change the laws which allow rampant discrimination against cable's competing technologies, to change the laws which fail to protect consumers from the kind of price gouging we have seen all across the country.

At some point, the Congress must also revisit the cable compulsory license. Both technology and the marketplace have changed radically since 1976 when the compulsory license was adopted as a way to give cable a competitive toehold alongside the more powerful broadcasters. Now, ironically, it is the cable MSO's that are holding a marketplace Sword of Damocles over the broadcasters, cable's technological competitors, and even over its own programming services by invoking exclusive distribution mandates.

For now, S. 12 is the answer.

To those cable systems which have shown greater responsibility—and I will be among the first to note that there are many such cable operators in my State and elsewhere—I would say that they have nothing to fear in this legislation.

To those programmers which have chosen to open up the market for program distribution—and there are now a few such companies—I would say that the program access provisions in this bill will not restrain your ability to do business in a responsible manner.

But to those cable operators and programmers who continue to gouge consumers, who continue to stifle competition at every turn—yes, this legislation is going to make a difference for you. For a change, they will have to consider what is fair for the consumer, and operate in a manner more responsive to the community leaders who represent those consumers.

That, Mr. President, is what I call progress, and that is our agenda here with this legislation.

So, in closing, I want to urge my colleagues to support the committee legislation, and to soundly reject the so-called alternative package designed only to stifle meaningful cable action in this Congress.

The problems plaguing cable consumers will not go away on their own accord. If history is any teacher, these problems will only get worse. The time to act is now.

Mr. President, I yield the floor.

EXHIBIT 1

[From the Wall Street Journal, Jan. 27, 1992]

CABLE CABAL: HOW GIANT TCI USES SELF-DEALING, HARDBALL TO DOMINATE MARKET

(By Johnnie L. Roberts)

ENGLEWOOD, COLO.—In many ways, Tele-Communications Inc. is a classic tale of bootstrap entrepreneurship. From a tiny company struggling in the scrubland of West Texas, TCI has built itself into the world's biggest cable-television enterprise. One of every five American cable users is wired into TCI in one way or another, and about 20% of the industry's entire revenue flows to this behemoth.

To many of its rivals and customers, through, TCI represents not the best but the worst in American business—a monopolistic, strong-arm bully, they say, that squeezes other cable operators, denies free competition to programmers and flagrantly disrupts the plans of rivals. The "ringleader" in the "cable Cosa Nostra" is what Sen. Albert Gore Jr. of Tennessee calls TCI. Contends Mel Cohen, the mayor of Morgantown, N.C., where TCI operates a cable system: "TCI is trying to crush our city government."

TCI, which owns more than 1,000 cable systems, is also very tightly controlled. Bob Magness, TCI's founder and chairman, and John C. Malone, its chief executive, built and dominated the company in part through internal self-dealing, an investigation by The Wall Street Journal shows. In one case, the two sold to TCI a group of Utah cable systems the company apparently already owned.

GETTING CONTROL

Their stock transactions—often only partially disclosed in federal filings and usually unavailable to other shareholders—may or may not have violated securities laws; the law prohibits corporations from withholding important information from shareholders. But the objective of the dealings appears clear. Through these and other transactions, the two men built one of the most influential and feared companies in the television industry, and granted themselves effective control over it. Many contend that consumers ultimately paid the price, as TCI worked to squelch competition in the cable industry.

TCI emphatically denies engaging in any questionable transactions with its top two officers, or anyone else for that matter. Any suggestion that "when we paid Magness and Malone shares we were paying them for assets we already owned is false," a spokesman says. He cautions, however, that the denials and elaborations are based on the "collective recollection" of TCI executives, and that he didn't consult Messrs. Magness and Malone, who declined to be interviewed specifically about the transactions. Further, the company says it was unable to retrieve records from storage that bear on the internal stock dealings.

The spokesman says allegations the company is a bully in the market are also false. He says TCI just tries to offer the best service at the best possible price, amid rising competition.

For his part, Mr. Malone does say in an interview that, in general, TCI's transactions with its top officials are merely a way of supplementing salaries and teaching top brass about different aspects of the cable business. "TCI has one of the lowest, if not the lowest, salary structures in corporate America," he said. The deals have "allowed us to build wealth over time."

Messrs. Magness and Malone are paid a bit under $500,000 a year each and control a combined 36% of shareholder votes in TCI. When TCI spun off some assets into a company called Liberty Media Corp.—a move designed to answer charges that TCI had become too dominant—the two executives quickly acquired 56% of the voting shares of that company, too. The market value of their combined holdings is nearly $700 million.

The accumulation of that wealth and the sheer girth of TCI will undoubtedly draw the interest of the U.S. Senate this week, as lawmakers begin debating whether the cable industry has become monopolistic and whether additional regulation is needed. TCI and Liberty Media operate in 48 states and dwarf their next-largest rival, Time Warner Inc. TCI alone generates cash flow of $1.7 billion a year—more than ABC, CBS, NBC and the Fox network combined. Annual revenue approaches $4 billion. TCI and Liberty owns stakes in four of the top 10 cable channels and have an interest in nine of the top 25, including Cable News Network, Turner Broadcasting System, Turner Network Television, the Discovery Channel and Black Entertainment Television.

The company's critics say TCI's vertical integration—ownership of both the local cable systems and the channels that provide programming for those systems—gives it unfair power and is one of the best arguments for greater regulation of the industry. The company's outside shareholders, however, couldn't be happier. A dollar invested in TCI stock in the mid-1970s is worth more than $800 now. TCI has "given us a tremendous return," says Keith Hartman, with Associated Communications Corp., an investment company in Pittsburgh. Associated's $7 million investment in TCI in 1979 has swelled to well over $300 million. If TCI were sold today it would probably fetch at least $15 billion.

No shareholder has benefited more than Bob Magness, a cigar-chomping, rough-hewn rancher who started TCI with the purchase of a single system in Memphis, Texas. At age 68, he is worth over $500 million. For all his wealth, Mr. Magness eschews the life style of the rich and famous. For two decades he has lived in a modest ranch house atop a plateau overlooking Denver. "You go to his house for dinner and everyone takes his shoes off, more or less," says Rudy Wunderlich, a friend. The cable magnate has been known to shift a cigar to a corner of his mouth, resting it there while eating a T-bone steak. "He ain't very happy in a tuxedo," another friend says.

These days, Mr. Magness spends little time on TCI's day-to-day affairs. He raises horses and collects Western art, passions he pursued with his first wife and business partner, Betsy. She died in 1985, and he has since remarried.

He formed his cable company in 1956. As lore has it, Mr. Magness, a short and rugged Oklahoman, sold some cattle for funds to buy the franchise in Texas. (A franchise is the right to build and operate a cable system, and is usually awarded by local authorities.) From there, he and Betsy began collecting cable systems in Montana, Nevada, Colorado and Utah.

FINDING SUPPORT

By the mid-1960s, Mr. Magness needed backers. He found two in Salt Lake City—the Gallivan family, which owns the local newspaper, Salt Lake City Tribune, and the Hatch family, owners of local television station KUTV. (The family isn't related to that of Sen. Orrin Hatch.)

The investment by the Hatch family would prove problematic years later, when the federal government barred "cross-ownership" of local TV stations and cable systems in the same community. But with the families' help, Mr. Magness incorporated TCI in 1968 and took it public in 1970.

By 1973, though, TCI was flirting with bankruptcy: Mr. Magness, it seemed, lacked the skill to build and manage TCI as a modern enterprise. So he turned to Mr. Malone, a young Connecticut native and Yale-educated financial virtuoso who was then the president of a TCI supplier.

Shortly after taking over as TCI's president, Mr. Malone summoned TCI's impatient lenders to a meeting, the story goes, and gave them an ultimatum: either back off or take over the company. The lenders backed off, and TCI was able to refinance. Its quest for expansion resumed, fueled by mountains of new debt.

Today, Mr. Malone, age 50, is cable's most visible and formidable figure. He crafted the industry's $560 million rescue of Ted Turner's debt-laden business in 1987, which enabled TCI to gradually take a 25% stake in Turner Broadcasting System Inc.

Yet for all of his influence, the soft-spoken, Mr. Malone remains a stranger to many in the field. Says cable broker Bill Daniels, who shares a skybox atop Denver's Mile High Stadium with Mr. Malone: "I just don't know anyone close to him."

Mr. Malone, who holds two master's degrees and a doctorate in operations research, has served as TCI's strategic thinker and financial alchemist, deftly managing the company as a portfolio of cable assets and buying, shifting, marrying and decoupling them in ways that boosted their value. More than any other industry executive, Mr. Malone pulled the financial community onto the cable bandwagon, getting Wall Street to focus on the business's surging cash flow.

But that higher profile had a downside: it increased the chances that TCI might become a target of corporate raiders.

That risk grew in 1979 as Salt Lake City's Hatch family prepared to sell off its sizable stake in TCI to comply with the ban on cross-ownership. "With the Hatches gone, [Mr. Malone] felt the company was more vulnerable," says James Hoak Jr., a former executive at Heritage Media, a TCI-owned group of cable systems.

What to do? TCI started to address the problem in 1979 by creating a new class of stock, Class B shares, that had 10-to-1 voting power over the more widely held Class A shares. Now TCI had only to find a way to get the bulk of the Class B shares into friendly hands—such as those of Messrs. Magness and Malone.

Thus began a series of transactions so complex they almost seemed designed to befuddle. First, the Hatch family's TCI stake was acquired by an investment concern called Tele-Communications Investment Inc., which after the transaction controlled 24% of TCI Class B voting stock and 43% of the weaker Class A shares. Through a previous transaction, TCI owned half of that investment company, so TCI's management thus controlled half of the investment company's vote. But TCI management apparently was looking for a way to gain an even tighter grip on TCI.

Messrs. Magness and Malone embarked on a bout of labyrinthine self-dealings that ultimately would have TCI pay them a huge chunk of the super-voting shares. In one case, the dealings involved four separate companies with almost the exact same name—two owned by Messrs. Magness and Malone, two owned by TCI—and the swapping of Utah cable franchises and systems among them.

BACK AND FORTH

Acting through small subsidiaries, TCI first bought up franchises around Salt Lake City. Then TCI transferred the franchises—it isn't exactly clear how—to separate Magness and Malone companies with almost the same names as the TCI units. Later, TCI bought the Magness and Malone entities—even though TCI had owned some of the franchises in the first place.

The price: nearly one million of the super-voting Class B shares, which TCI paid to Messrs. Magness and Malone over five years. The stock, amounting to 13% of all shareholder votes by early 1991 and worth about $140 million at the time, essentially gave the two top executives enough voting power, when added to their existing stakes, to block any move they didn't like.

Records don't make it clear, but it appears the transactions could have gone one of at least two ways: Messrs. Magness and Malone paid only a small sum for TCI's Utah franchises and sold them back at a huge profit; or the pair received the franchises free and sold them back to the company. Either way, the transfers weren't disclosed to the Securities and Exchange Commission.

What is known about the transactions is this:

The deals began in 1979. Because of the cross-ownership ban, and because the Hatch family stake in TCI hadn't yet been sold, TCI couldn't pursue any new cable systems in the Salt Lake City market, the company said in public filings. TCI nonetheless wanted the unawarded Utah franchises in "friendly hands," Mr. Malone recalled in an interview.

So the TCI board urged Messrs. Magness and Malone to form their own private company to pursue the Utah franchises, with the idea that TCI would ultimately buy the properties from the executives. They and their immediate kin set up a new entity: Community Cable of Utah Inc.

APPLYING FOR FRANCHISES

TCI, it turns out, had a subsidiary that used that same name as a trade name. Through last subsidiary, and despite the ban on cross-ownership, TCI had already applied for and received quite a few Utah cable franchises, government records show.

For example, in 1979 the towns of Spanish Fork, Sandy, Salem, and Payson City all awarded franchises to a TCI subsidiary known as Community Cable of Utah Inc. But this Community Cable of Utah, records show, was registered in Nevada. The Magness and Malone-owned Community Cable was incorporated in Utah and was, legally, a separate and unrelated entity.

All of these franchises, however, would end up belonging to Messrs. Magness and Malone. Records don't make clear how this happened.

In February 1981, after the Hatch family stake in TCI had been sold, TCI acquired Messrs. Magnese and Malone's Community Cable of Utah, paying them and their family members 360,000 Class B shares of TCI. The company's assets, listed in disclosure documents, included at least one of the very same franchises and the system built under it—Sandy—that TCI's Community Cable unit had acquired a few years earlier. The assets also included 260,000 shares of Class A stock.

TCI executives give contradictory accounts of how TCI's Sandy franchise ended up as the property of Messrs. Magness and Malone. First, Bernard Schotters, a TCI spokesman, said the franchise had belonged to the two executives to begin with, but that Sandy officials insisted on naming the TCI subsidiary as the official owner.

Then, he and another spokesman, Robert Thomson, revised the explanation to say that TCI, indeed, had first owned the Sandy franchise, but had "assigned" it to another Magness and Malone entity, Community Television of Utah. In return, Messrs. Magness and Malone "paid" TCI by granting TCI the right of first refusal to buy the Sandy property back.

But local records show that Community Television of Utah isn't owned by Messrs. Magness and Malone—it is yet another unit of TCI. The various explanations, moreover, contradict a filing TCI made with Sandy officials in the late 1980s: In it, TCI said it had received the Sandy franchise back in 1979, when TCI was telling shareholders that it was federally barred from doing so because of the crossover restrictions. Today, in explaining its past actions, TCI says it was wrong to tell shareholders that it couldn't own a franchise; in fact, TCI says, it was permitted to seek a franchise, but not to own and operate the cable system built under the franchise.

TCI and its two top officers and their families, who now were flush with the additional 360,000 Class B shares, then repeated the self-dealing. What they gained, again, was greater control of TCI itself. Here's how it worked:

In selling their Community Cable to TCI, the two men held back five cable systems covering 12,000 homes in central Utah. TCI never identified the specific systems in public filings. But records indicate they were the franchises that had been granted to TCI's Community Cable of Utah through a 100%-owned TCI unit. In any case, Messrs. Magness and Malone now owned them and shifted them into yet another new entity with the same name, TCI says today. This version of Community Cable of Utah was registered in Colorado.

In April 1983, they exchanged the five systems for a 21% stake in a new TCI company formed to make acquisitions. TCI valued the assets of their Community Cable of Utah at $3.8 million. The acquisition company, meanwhile, went on to buy another cable system.

In December 1985, TCI bought out the two men's stake in the acquisition company. The price: 600,000 shares of Class B stock in TCI, worth almost $23 million. On the same day, TCI paid them another 50,000 Class B shares, valued at $1.9 million, to acquire another 21% stake the two men had in yet another TCI entity, which had purchased a cable system in Buffalo, N.Y. That 21% stake had cost the two just $210,000 only a year earlier, according to TCI proxy statements.

TCI's two spokesmen, Messrs. Thomson and Schotters, provide contradictory explanations for the turn of events.

First, Mr. Schotters said TCI itself obtained most of the live Utah franchises in question—despite TCI's earlier claim, in proxy statements, that it wasn't allowed to do so. He said TCI, it turns out, was allowed to seek franchises—it just couldn't build and own the systems. Messrs. Magness and Malone did the building outside of the TCI corporate umbrella with TCI financing, he said. But he added that TCI isn't sure whether it ever transferred ownership of the systems to the two men.

Later, the TCI spokesmen said the Magness and Malone company had been awarded at least two of the franchises involved by Utah authorities. But local records show all five Utah franchises were directly awarded to TCI's subsidiary. TCI can't explain whether it transferred the rights to its top two executives—or when, or for what price.

Combined and adjusted for stock splits, the more than one million Class B shares that TCI paid Messrs. Magness and Malone over the years became 10.5 million Class B shares as of January 1991—before Liberty Media was spun off—with almost $140 million and equal to about 13% of all TCI shareholder votes.

Today the Magness and Malone combined holdings give the two veto power over any decisions at both TCI and Liberty Media, thanks in part also to substantial payment of Class B shares they've received under their employment contracts.

PLAYING TOUGH

As the two men built their empire, leaving behind this maze of dealings, they were slowly developing a reputation for hardball tactics with local governments and rivals. Six years ago, for example, TCI began waging war on Morganton, N.C., population 28,000.

The battle was over the company's cable franchise in Morganton, which was expiring and which the town council decided not to renew. Service was "atrocious," Mayor Mel Cohen charges today, and the town began studying whether to build its own cable system.

TCI argued that government ownership would be illegal and countered by suing Morganton, asking $35 million in damages. The town won, but TCI has been appealing the decision ever since, continuing to collect $1.3 million a year in local cable revenues. At one point, TCI offered to sell the system to a buyer group. But the town balked after learning one of the buyers was partly owned by TCI.

Then last year, TCI hired a lobbying firm that formed "Citizens Opposed to City-owned Cable." The group gathered petition signatures to force a vote by citizens on whether the cable system should be owned privately or by the government. Morganton officials contend there was a catch: The petition included a measure—drafted by TCI—that would have virtually guaranteed TCI a lifetime franchise if the vote was in favor of private enterprise. The local board of elections rejected it, and another court battle was on.

Undeterred, TCI targeted Mayor Cohen and an incumbent town councilman for defeat in elections last Oct. 8, the mayor says. The TCI-funded citizen group ran as many as three newspaper ads a day in the three weeks preceding the election. One pictured two buzzards sitting on an electric line and read: "Morganton politicians are sitting high on the perch."

WINNING THE ELECTION

All told, TCI spent about $144,000 on the campaign—dwarfing the $400 to $600 the incumbents say they each spent to get re-elected. In the end, the mayor and the councilman both were re-elected.

TCI's Mr. Thomson generally confirms the events in Morganton but says he expects the two sides to settle the dispute. "We anticipate calmer heads will prevail," he says.

TCI has played a similar form of hardball with its rivals. Its source of power lies in the fact that the sheer size of its systems can make or break a new channel—and keep a rival channel from reaching many American households. That size also gives it enormous leverage in demanding lower prices from independent channels.

The company's move into programming began in earnest in 1979 when it invested $180,000 in a start-up called Black Entertainment Television. From the mid-1980s on, TCI acquired stakes of 5% to 50% in American Movie Classics, the Discovery Channel, the Family Channel, and Turner Broadcasting and its three cable outlets, Cable News Network, Turner Network Television and Superstation TBS.

Critics say TCI displayed its power last year when it fought to win control of the Learning Channel, an award-winning educational channel that was 51%-owned by troubled Financial News Network Inc.

FNN was bound for bankruptcy-court proceedings, and it put the Learning Channel up for sale. Several bidders emerged, including the Public Broadcasting System, the Lifetime cable channel—and Discovery Channel, 49%-owned by TCI.

Initially, analysts estimated the Learning Channel might be worth $80 million or more. But as FNN's woes worsened, offers dropped. Lifetime offered $40 million, outbidding TCI's Discovery, and began negotiating a final deal. Then TCI elbowed in. TCI's Mr. Malone suddenly decided that the Learning Channel had declined in quality, and he ordered TCI's local cable systems—which accounted for as many as one-third of the channel's total subscribers—to dump the service.

That, of course, made the Learning Channel a less attractive property to the bidders at Lifetime, which is owned by Capital Cities/ABC Inc., Viacom Inc. and Hearst Corp. Executives from Hearst and ABC descended on Mr. Malone in Denver and pleaded with him to keep the Learning Channel on TCI systems, according to officials with Lifetime. They outlined plans to improve the channel and pledged to freeze the rate paid by TCI systems for the channel for two years.

But Mr. Malone said TCI couldn't promise it would carry the redone channel if the sale went through, according to people familiar with the meeting. Today Mr. Malone says he had worried that a bankruptcy judge might force TCI to continue carrying the channel. He also says that, in his opinion, Lifetime's revival plans weren't firm. "We wanted to put them on notice that we have no obligation to carry" the channel, he says. He also said TCI was concerned that the Learning Channel would raise its rates after it was acquired by Lifetime.

Lifetime soon abandoned its bid. A short time later, the Learning Channel got another buyer—TCI's Discovery Channel, which snapped up the Learning Channel for $31 million. After making some programming changes, TCI decided it was fine after all, keeping it on many, though not all, TCI systems. TCI's chief operating officer, J.C. Sparkman, says that TCI "had nothing to do with whether Lifetime or Discovery" acquired the Learning Channel, and that TCI did nothing untoward during the bidding.

GETTING ON THE SYSTEM

Another rival has also complained about TCI's extensive control over both the medium and the message. Home Shopping Network's chief executive, Roy M. Speer, charged in testimony to congressional subcommittees last year that TCI "systematically refuses" to carry Home Shopping on TCI systems because of its own sizable stake in a rival channel, QVC. (Liberty now holds the QVC stake.)

Home Shopping managed to sign up only 3.7% of TCI's subscriber base, although its sign-up rate was 47% for most other top cable operators, the service said in a 1990 filing with the Federal Communications Commission. Home Shopping said TCI was thus depriving it of hundreds of millions of dollars in revenue and was increasing its costs.

Mr. Speer declined to be interviewed. But in his testimony he detailed years of alleged discrimination by TCI. TCI's Englewood, Colo., system once told Home Shopping it couldn't carry the network because it competes with QVC, Mr. Speer said. In 1988, TCI directed two systems it had acquired in Pasco County, Fla., to cancel Home Shopping and replace it with QVC, he said. In April 1990, TCI's top California manager told Home Shopping there was "no way" his systems could carry it, given that TCI had a stake in QVC, Mr. Speer charged.

TCI denies it discriminates against Home Shopping but declines to comment further. In a letter last summer to Sen. Daniel K. Inouye of Hawaii, TCI said it believes it is Home Shopping's largest carrier, accounting for one-quarter of Home Shopping's viewers.

The fortunes of QVC, meanwhile, are soaring. While Home Shopping Network posted an $8.9 million loss on one-time charges in its most recent fiscal year, QVC reported almost $5 million in profit in the first half on $391 million in sales, which were up almost 22%.

If TCI can be hard on rivals, it sometimes is no more gentle with consumers. Last summer it launched Encore, a low-priced movie channel, using the "negative option"—subscribers all had to pay extra for it unless they explicitly told TCI they didn't want it. The company figured that putting the burden on customers to say no promised to corral 80% of TCI households for Encore. It also says it had to use the strategy because of technical limitations in many of its cable systems. A Texas newspaper called the strategy "sneaky," others said it was anti-consumer, and a judge halted it. At least 10 states sued, and TCI had to abandon the gimmick nationwide.

But the setback was something of an exception. Usually TCI gets its way. In 1985, for example, when General Electric Co.'s NBC network set plans for an all-news cable channel, officials assumed it "couldn't happen without TCI," recalls Lawrence K. Grossman, president of NBC News at the time. But in the end, TCI merely played NBC off against CNN, whose programming the cable company was already carrying. According to Mr. Grossman, TCI used a proposed alliance with NBC to get price breaks from CNN, and then backed away from the NBC proposal.

Several years later, NBC tried again. By this time, TCI had taken a stake in Turner Broadcasting. To win TCI's support, NBC promised that its new channel, CNBC, would focus on business and finance instead of running an all-news format that would compete with Cable News Network, say people familiar with the transaction. NBC also agreed to pay TCI $20 million for a fledgling TCI channel called Tempo. Sen. Gore, in a 1989 Senate hearing on media ownership, called that payment a "shakedown" by TCI.

NON-COMPETE PROVISION

NBC Chairman Robert Wright and TCI scoffed at the shakedown allegation, and TCI denied it had forced NBC to avoid competing with CNN. But Mr. Wright testified that most cable companies "required, if you will," a non-compete provision and said it "wasn't exactly what we would have preferred." TCI and NBC have since joined in several business ventures.

Afraid that TCI's dual role in owning cable systems and channels would prompt the federal government to try to break up the company, Messrs. Magness and Malone conceived a plan that would appear to do just that—while letting them retain total control of the empire.

Last year TCI spun off $605 million of assets in the form of a new company, Liberty, and sold Liberty to TCI shareholders by giving them the option of swapping some of their TCI shares for shares in the new company. But TCI set up Liberty as a second vertically integrated company with cable systems of its own.

What's more, Liberty purports to be an independent company, but it employs mostly TCI people, has Mr. Malone as its chairman, and has five TCI executives on its board of six directors.

"This so-called spinoff should be renamed 'All in the Family,'" said a critical staff report to the Senate Commerce Committee.

Liberty shares have more than tripled in price from an original $230 to $770 a share in less than a year of trading. The swift rise has some analysts wondering whether the appreciation is warranted. "It is ridiculously overvalued," contends Frederick A. Moran, president of Moran Asset Management Inc., a money management company. He recently advised clients to dump Liberty shares.

Messrs. Magness and Malone own 56% of Liberty's shareholder votes and were able to grab such a dominant stake because many other shareholders in TCI didn't elect to participate in the swap.

EXPANDING INFLUENCE

Under Mr. Malone's control, Liberty has been especially generous to him; he owns 164,000 shares worth $126 million. Records show he obtained 100,000 Liberty shares through options in lieu of salary in one fell swoop, even though his contract at the time limited him to 20,000 shares a year for the next five years. In October, Liberty directors let Mr. Malone exercise all of the options at once.

Exercising the option cost Mr. Malone $25.6 million, but he had to put up only $100,000 in cash, according to Liberty filings with the SEC. Moreover, Mr. Malone raised the money by selling part of his personal stake in Liberty's QVC channel back to Liberty. He gave the company a $25.5 million note for the rest of the stock, with a low annual interest rate of 7.54%. Mr. Malone later paid off part of the debt by giving Liberty some of his TCI stock.

To lessen their risk when Liberty was spun off, Messrs. Magness and Malone structured the deal to insulate themselves from any losses, even if it meant damaging Liberty itself. Under the terms they set—which weren't available to Liberty's outside shareholders—Liberty must arrange the purchase of stakes held by the two executives and the Gallivan family, the early TCI backer, at a guaranteed price if these shareholders are ever forced by regulators to divest. The guaranteed price is an average of the stock's price over a specific trading period.

"The actions [Liberty] may be required to take in order to satisfy such obligations . . . could have an adverse effect on the company's business, financial condition and prospects," the company warned in SEC filings.

Mr. WIRTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. WIRTH. Thank you very much, Mr. President.

I had not intended to speak today. I thought that this was sort of an opening day of debate, and that we were going to get into this more severely after the final votes on the education bill tomorrow which has consumed a lot of people's time.

But I found myself compelled, sitting in the chair earlier, and also listening to some of this debate, when certain language is used and certain accusations are made, that I think we ought to look at this issue perhaps as a starter a little more rationally.

Let me just quote some of the language that has been used. "Getting rolled," "gag," "monopolies," "shakedown," "ringleader," "Cosa Nostra." Last I noticed, Mr. President, the Cosa Nostra was out dealing death to a lot of individuals, assassinating people.

It seems to me, Mr. President, that if we are going to discuss an important public policy issue, it is important for us at least to start with a modicum of control in the rhetoric that is floating around this important issue.

Having said that, Mr. President, I would like to point out my own concerns and interests in the cable industry which have been long standing. In 1975, I had my first exposure to the cable community in a loft in Denver.

Some people asked me to come up there and talk about the pole attachment bill. That had nothing to do with the Warsaw Pact or Central Europe or changes in the nature of the Communist system, but, rather, it was legislation which pointed out for the first time some of the problems the cable industry was encountering.

The communications industry, Mr. President, has historically been one of the in's keeping the out's out. I will talk some more about this later. But the legislation which was being discussed, first in 1975 related to pole attachments, was legislation to try to make sure that the telephone industry, which was doing everything it could do to box out the cable television industry was, in fact, controlled. And we were able to do that in legislation which I successfully offered in the late 1970's, the pole attachment bill, which was the first time, I think, that the cable industry saw some freedom and some light at the end of the tunnel.

Starting in 1981, I had the privilege of chairing the Telecommunications and Finance Subcommittee on the House side. And one of the responsibilities there was the overall communications industry in which we saw very dramatic and, I think, very welcome changes in the 1980's. Our system became much more competitive. A lot of people did not like that, but, I think, overall, that has served the country very well. And our telecommunications industry became much more competitive as well.

We saw the end to the real monopoly or the lockstep for the three networks. With the passage of the Cable Act of 1984, we really saw the opening up of the enormous potential for the use of fiber optics, digital communications, and the linkage of all of this new technology to some of the ideas that have been out there engendered by people such as Ted Turner and John Malone, and others who very early on in this bill—Bill Daniels.

There is a list of people who go way back in the cable industry. They had seen a lot of potential in this. They were frustrated by the regulations and the FCC that really stood in their way.

The cable bill of 1984 of which I was the primary author on the House side really opened up this industry and opened up the enormous potential it had. I will come back to that in a minute.

I not only have this historic interest in it, having been deeply involved and having had continuing concerns about telecommunications and its importance to a democratic system and to the country, but also I have a very real concern related to the industry as it has been largely headquartered in Denver, CO.

I need not remind my colleagues that when we are elected to public office, presumably we are elected in part to represent the interests of the people who do elect us. I think that is a very appropriate thing to do. I have been—both for historic reasons and my own interest reasons, my own concerns about a democracy and what it is—concerned about the constituents of the telecommunications industry. TCI was there. The current Time-Warner operation was there for many, many years. Jones Intercable is headquartered in Denver. There are a number of other very large companies that have a major interest in the long-term economic viability of Denver and Colorado which I believe I have a legitimate concern for and will continue to protect.

Third, I have an interest because I believe that the cable television industry has begun to reach the enormous potential which was discussed, sort of in a faint echo in the 1960's, with some greater regularity in the 1970's, and which really came to a crescendo with the passage of the Cable Act of 1984. I think we hear this enormous amount of rhetoric going on related to the cable industry. Also, while that is happening, it is necessary to paint the background, and the concern about what other things are going on.

For example, if we are, as we are currently in the debate over the education bill, really concerned about the education of young people in the country, presumably we ought to use our technologies of mass communications to further that. You know, we used to do that before the current FCC—before the Reagan people came to town in 1981. We used to have an FCC that thought it was important that broadcasters broadcast in the public interest, convenience, and necessity. Those are words out of a 1934 Communications Act. They thought that, in return for receiving a franchise, in return for receiving the use of the airwaves, broadcasters in return have a public interest. They are supposed to broadcast in that way.

It used to be that the public interest was in part defined by children's programming—did a broadcaster meet as well the educational and other needs of children? That used to be one of the public interest requirements that we laid on broadcasters.

Come 1980, that vastly disappeared. You cannot find broadcast over the air today, Mr. President, I do not believe, a single regular program focused on the needs of kids other than Saturday morning program-length commercials, and so on. It is very hard to find any real educational programming that used to characterize much of what was done in the sixties and seventies. With the developing of the public interest doctrine by the FCC and by all the broadcasters in 1991, we have seen no programming for kids, no programming aimed primarily at the educational needs of kids—nothing like that except on cable television.

It is on cable television that you can now turn and find those offerings—outside, by the way, of public broadcasting where "Sesame Street" and related kinds of programs still are, thank goodness. But in terms of commercial, over-the-air broadcasting, it does not occur except on public broadcasting and on cable.

Nickelodeon, a very good example known to everybody who was kids; the Discovery channel, which brings science and the wonderful world of the environment around the globe to kids. This is, fundamentally, major educational programming for kids. These are there and offered, and the offerings are growing and growing extensively. That public responsibility is being met by the cable television business.

It was not there prior to 1984. It is now there. It is an example of the kind of programming that is being brought to America and from which America can choose.

I need not tell our viewers about C-SPAN. Some people like to watch the grass grow, and the House and the Senate, and see what is going on here. Sometimes the debates are interesting. Sometimes they are not. But there is this wonderful cable public affairs network on which I think Brian Lamb has done a tremendous service to the country on not only bringing the House and Senate but all kinds of hearings in the public interest across Washington—done by the cable television industry.

Most of us in watching what went on in Tiananmen Square, most of us watching the opening days of Desert Storm, the war in the Middle East, were glued to CNN. The President of the United States talked about watching what happened in Tiananmen Square—an incredibly brave, young individual standing up in front of that tank, an image emblazoned upon the consciousness of each of us. Where did that come from? That was a CNN image.

Watching missiles come in Saudi Arabia; come into Israel; images of people on the screen with their gas masks on waiting for the incoming, not knowing what it might be—emblazened upon us. That was a CNN offering under, I think, the brilliant initiative of Ted Turner and now developed by Tom Johnson, a first-rate news individual, first-rate news leader. CNN has now become a fixture in the American marketplace and one on which people depend extensively. "Headline News," a spinoff of that.

I could go on and on with one example after another of the kinds of programming we have seen, Mr. President, as a result of the growth and prospering of cable. And there is more promise to come.

We have moved in a very short period of time from 33 million subscribers—I think that was the figure in the early 1980's, if I remember correctly—it was about 33 million households. We are now almost at 60 million households. The number of people subscribing to cable television has almost doubled in the last 7 years.

Mr. President, I would argue that if this is such a deleterious offering, if this is something that was so bad for the American public, if this is something that—to use the words earlier—is a product of the Cosa Nostra, a monopolistic shakedown, rolling, gag practices, why did 30 million more American households subscribe to cable television? Obviously, there is a service and a product there that people want. Otherwise, they would not subscribe.

It seems to me that that is a pretty logical thing to say.

In other words, I just wanted to point all of that out as background, Mr. President, to point out my own longstanding and I believe very legitimate and continuing interest in the cable television industry, an interest that I think reflects that of consumers, reflects that of parents, reflects that of citizens overall, and reflects that of my own constituents in the State of Colorado.

Let me now turn to another one of the arguments that was made, I think very, very incorrectly today, that there is no regulation at all of this Cosa Nostra monopolistic entity which has been described as being cable television. That is flat wrong, and I wanted to take a minute or two just to correct the record on this.

First of all, in terms of local authorities being able to regulate cable television, if a system has less than six over-the-air broadcast signals—this is generally small communities, older communities—the local community can regulate that cable system.

How many systems are there? That is about one-half of the systems overall can be regulated by local authorities and a third of the subscribers fit into the smaller definition, less than six over the air broadcast signals. So to say there is no regulation is just preposterous. That is not true.

Second, that cable is getting away with the store. The argument was made earlier that is the case. That is not true either, Mr. President. In terms of franchise fees, the cable television industry pays 5 percent of their gross. That, last year, amounted to nearly $1 billion in overall funding coming into communities across the country, which I believe is more than community development block grants, what is left of the UDAG program, and so on, all put together. The cable television industry has been providing more support for urban areas than those programs and others.

Third, equal employment opportunity. When the Cable Act of 1984 was written, I can remember a very extensive and stormy negotiation which occurred downstairs, right here, and I believe the distinguished senior Senator from Utah, Senator HATCH, the late Congressman Leland, and I had a very, very extensive negotiation on those equal employment opportunity standards. Senator HATCH really led the fight to build these into the cable legislation. He did a magnificent job. It was the first time I ever worked with the distinguished Senator from Utah. He did a magnificent job and built into the cable television legislation the most compelling and the most stringent equal employment opportunity language in any statute—in any statute—at the Federal level related to any organization.

Fourth, public education in Government channels, the so-called PEG channels, were requirements for those, put in in 1984 against the wishes of the cable television industry, but now used very significantly. Least access, which has not worked as well so far, but still opportunities for getting on the cable systems and controlling the so-called bottleneck issue. Anti-redlining provisions are very, very extensive and extraordinarily important to make sure that this industry, like many others serving the urban areas, cannot red-line in its concerns.

So I wanted to point out some of the realities, and we will have a chance to talk about more of these, Mr. President. I wanted to talk about some of the realities, where this industry came from, what some of the promise has been, what we hoped from it and how the promise has been met.

What are the real concerns that lie behind this legislation? The real concerns that lie behind this legislation, as described by the earlier proponent, the senior Senator from Missouri, were rates and service. The distinguished Senator from Missouri mentioned at some length the number of communities in Missouri and how rates had gone up 145 percent or 185 percent or whatever, and mentioned also on the service side that there were a variety of communities where you would call up and there was no answer on the telephone. These are two very legitimate interests.

The interests of rates and services are very legitimate interests. I have stated that for years and years, that unhappily, there have been some cable systems that abused the privileges that came in 1984 and that some rate reregulation is necessary for them. Also, I have pointed out over and over and over again that the cable industry has doubled in size in the last 7 years. In many ways it has outgrown itself. It has not kept up with the service to keep up with the number of customers that it has, and it has a variety of service problems. Those are legitimate interests.

The rate issue and the service issue are legitimate interests, and that is what we ought to be doing in this legislation. That is the common ground between the so-called substitute and the bill that is on the floor authored by Senator DANFORTH and others.

I suggest to my colleagues in the Senate that that is where we ought to stop. Let us focus on that rate issue, let us focus on the service issue, and leave it at that. That is where the common ground is. We agree completely with that. We agree that is something that has to be done. The regulation of rates, the regulation of service, we agree that ought to be done.

Why go on and do a variety of other things? Let me give examples of what else is in the bill. I ask my colleagues why in the world they want to climb into a whole variety of other issues that have nothing to do with the primary problems of rates and services.

Let us set aside the rate issue and service issue. They are legitimate. There are a series of other issues that are not legitimate and should not be in this legislation. Let me give some examples.

Access to programming: The requirements in the Danforth bill require, mandate access by competitors at a favorable price to programming, which is like saying we are going to say to NBC, what we are going to do is require you, NBC, to se.. Tom Brokaw and the NBC Evening News to any television station that wants it. Would we do that with over-the-air broadcasting? Of course not.

NBC has an interest in its evening news and its evening news is broadcast by NBC-owned and operated stations or NBC affiliates. You do not have crossover to other places. You do not have various CBS, independents, whatever, taking NBC's programming. Of course we do not. Why would we want to do that with cable television?

Or a syndicated columnist, let us say George Will. If one wanted to have George Will in an evening newspaper or in a newspaper, one newspaper has George Will and its competitor across town does not have George Will; is it not to the advantage of the newspaper that carries George Will, that markets George Will?

Or to use maybe a better example: Doonesbury. One newspaper carries Doonesbury and the other does not. It is a competitive advantage to that newspaper to carry Doonesbury and that is a competitive advantage over the neighbor. Would we require the other newspaper to be able to buy Doonesbury or require Doonesbury to sell to both papers? Of course not.

This is the basic access to programming decision. Trying to take cable television's programming and require they sell it to a whole variety of other people on an indiscriminate basis, much less to require them to sell it on a reduced rate basis, I will argue, Mr. President, that has nothing to do with this issue of rate and this issue of service. That is purely part of the attack on the cable television industry.

Those who are wondering whether they ought to support this bill, or support the substitute, I will argue to them that this is one very large reason for supporting the substitute. Support the substitute. Focus on rates. Focus on programming. But do not get into all of these other attacks on the industry which gets you into a whole variety and diversity of issues, a whole series of copyright issues. It is very, very complicated and unnecessary and has nothing to do with the fundamental issues of the cable industry and the consumer problems, which are rates and ownership.

Those of us who are sponsoring the substitute are saying over and over and over again that there are problems with rates, there are problems with service. Let us go after them and take care of those. Let us not get into all of these structural and industry problems that have nothing to do with what consumers are concerned with and have only to do, largely, with what other industries are trying to do to get into a greater part and to try to change the nature and the structure of the industry overall.

Another issue is structural ownership. That is another one of the pieces that is in here, Mr. President, saying that what we are going to do is provide that there are going to be certain ways in which a cable company can and cannot be structured. Do we do that with other industries? Do we say to the Washington Post you cannot own newspapers, radio stations, and television stations? Do we say to Cox Cable, Cox Broadcasting in Atlanta, you cannot own broadcasting properties, cable properties, and newspapers properties? Do we say that to the Providence Journal? Do we say to them, you cannot own broadcasting properties, and cable properties, and newspaper properties? Do we say that to the Times Mirror in Los Angeles, you cannot own a variety of these properties? Of course we do not. What we are doing is saying that to a handful of other companies, though.

Why are we applying this structural ownership prohibition on one group of companies and we say to another group of companies it is perfectly all right to do it? Now you tell me what is the consistency in that. There is none.

In addition to that, Mr. President, another problem this brings up is if you have this kind of restriction, you are dramatically limiting the availability of capital to these companies to do exactly what we want the independent cable television industry to do, what is to provide a greater and richer array of product, of programming. The minute you say to Ted Turner you cannot to these things, what is going to happen to CNN? What is going to happen to the Discovery channel? What is going to happen to the possibilities of all the other things that come into cable television? It makes no sense whatsoever.

Anyway, Mr. President, I would go on at greater length, and I will tomorrow and the next day, about the other issues that are irrelevant to the fundamental issues the distinguished Senator from Missouri says are driving this bill. If, in fact, it is true, as the senior Senator from Missouri says, that what we want to do is to focus on the rates issue and the service issue, then let us focus on the rate and the service issues, and that is what the substitute does. We think that is what this issue is all about.

We believe, those of us who are sponsoring the substitute, that the fundamental consumer issue is rates and service. We believe that fundamental issue ought to be addressed and is addressed thoroughly in the substitute—rates and service. It is getting into a whole variety of these other issues that spill over into copyright questions, spill over into the whole area of concentration. What is good for the goose is good for the gander; if we are going to do this for the cable industry, we are going to do it for the Times-Mirror? Are we going to do it for a whole variety of other communications groups in the country? I think not. We ought to be consistent about this. There is no reason for taking on all of those other issues, absolutely none.

Mr. President, I will close where I started. I had not intended to speak this afternoon, but I felt compelled when I heard a lot of this language coming out, the discussion of getting rolled, monopolists, shakedown, ringleader, cable Cosa Nostra, gag—a whole variety of words and sort of a pejorative in all of this that I think is not appropriate for this Chamber, nor do I think it is descriptive of the very real problems that do exist, one on rates and the other on service.

Let us stick with the substitute, focused on rates and service. That is what we ought to do. That is what the consumers want. I believe the substitute we are offering is truly a substitute which focuses on the issues that consumers are concerned about, and should be concerned about, because there are places where there has been rate abuse; there are places where services have not been what they want it to be. The industry knows that. We all know that. Let us take care of those real problems.

Mr. President, I thank the Chair very much for his forbearance and that of my colleagues, and I yield the floor.

The PRESIDING OFFICER (Mr. WOFFORD). The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent I may be allowed to proceed as if in morning business for not more than 7 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MURKOWSKI. I thank the Chair.

A COMPREHENSIVE PLAN FOR SPURRING THE ECONOMY

Mr. MURKOWSKI. Mr. President, one only has to watch the news or pick up a newspaper to see that concerns about the direction of the U.S. economy are dominating the minds of Americans, and with good reason.

Of course, the good news is the interest rates have shown substantial decline. We are saving billions of dollars on the cost of carrying the national debt. But nevertheless, Mr. President, sluggish economic growth and decreasing economic competitiveness, as we look at our neighbors, and an ever-increasing national debt are problems with ramifications which can be felt in all corners of our society. Addressing these problems will require a bold, comprehensive approach, not a short political fix, if we are to provide the necessary solutions which will ensure our Nation's long-term economic security. That is certainly a charge of this body.

Mr. President, tomorrow our President will speak to these issues in his State of the Union Address. I am confident the President's address will serve to chart an appropriate course for achieving economic prosperity for our Nation. Today I would like to address some of the key elements in any meaningful economic growth package.

COMPREHENSIVE APPROACH

The approach toward stimulating economic growth must be multifaceted. No single solution will be adequate and no political gimmicks will do. Long-term, sustainable economic growth must tackle head-on the Nation's economic ills. A comprehensive approach invariably must include some components that provide economic stimulus in the near-term and some components that provide long-term solutions.

MIDDLE-CLASS TAX RELIEF

Mr. President, tax relief has been suggested by many as method of stimulating short-term growth, putting more money into the pockets of taxpayers. I hope we all agree that the