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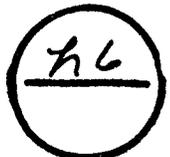
CC 28

CITY COUNCIL MEETING

JULY 6, 1983

S.66 FAN OUT
NETWORK REPORT
RECEIVED

City Clerk Reimche presented a letter and report which had been received from Mayor Paul E. Zeltner, U.S. Conference of Mayors Cable Task Force regarding the S.66 Fan Out Network. No formal action was taken by the Council on the matter.



RECEIVED

JUN 23 PM 10: 21

Larry Van Norder
Council Member

Jacqueline Rynerson
Vice Mayor

G. C. (Dee) DeBaun
Council Member



Paul E. Zeltner
Mayor

ALICE M. REIMCHE
CITY CLERK
CITY OF L.C.D.I.
Robert G. Wagner
Council Member

M E M O R A N D U M

TO : Mayor and Council
City Manager
City Clerk (In Non-Manager Cities)

FROM : Mayor Paul E. Zeltner
U.S. Conference of Mayors Cable Task Force

DATE : June 21, 1983

SUBJECT : S.66 FAN OUT NETWORK REPORT

Action Requested

Please:

1. Write Representatives Jim Bates, Carlos Moorhead, Henry Waxman and your own Congressman in support of U.S. Conference amendments and additional House Telecommunications Subcommittee hearings on S.66, including a California field hearing.
2. Complete the attached "S.66 Network for Local Cable Authority" if you wish to continue to receive and act on our S.66 Fan Out Network Report.
3. Write U.S. Senator Pete Wilson thanking him for his support of California cities during the U.S. Senate debate on S.66.
4. Request your local educational agencies, local cable access producers and religious organizations to contact your Congressman in support of the proposed U.S. Conference of Mayors amendments to S.66.

Background and Developments

The U.S. Senate passed S.66 last Tuesday, on a lopsided 87-9 vote. The one-sided vote reflects last-minute concessions to individual Senators to protect their local cities. Among the most successful concessions were a package obtained by California U.S. Senator Pete Wilson:

- * The California rate deregulation law is grandfathered as a substitute for the one-sided federal regulation law contained in S.66.
- * California cities that levy a utility users' tax on cable may continue

Lakewood



to do so.

* Cable companies may not apply for a franchise extension -- and thereby end the limited grandfathering of facilities and equipment in S.66 -- until three years before the end of their franchise.

Senator Wilson should be thanked for his support of California cities.

The Revised S.66

Attached is the Senate-passed version of S.66.

The Votes

Here's how our U.S. Senators voted on key S.66 amendments:

* The AT & T amendment subjecting cable companies to competition from local telephone companies for the transmission of data and two-way telecommunications:

Aye: Cranston

No: Wilson

* "True Grandfathering" of Franchises

No: Cranston and Wilson

* Removal of Presumption of Franchise Renewal

No: Cranston and Wilson

* Retention of Local Rate Regulation

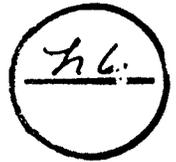
No: Cranston and Wilson

* Final Passage

Yes: Cranston and Wilson

It is important to note that Wilson got "trade offs" in favor of California cities in return for his votes for S.66. Senator Cranston did not.

The success of the Wilson Amendment shows what improvements can occur through our joint action.



On a unanimous vote, the attached resolution was adopted by the U.S. Conference of Mayors last Denver. The U.S. Conference will mount a major effort to obtain a House of Representative cable bill in favor of local authority and consumer protection.

The House Fight

The key decision makers in the House are the members of the House Energy and Commerce Subcommittee on Telecommunications. California members are Henry Waxman, Carlos Moorhead and Jim Bates.

It is essential that you contact these members -- plus your local Congressman -- in support of U.S. Conference of Mayors amendments to S.66.

The amendments are:

- * "True grandfathering" of the terms and conditions of existing franchises, which were freely negotiated.
- * Retention of the basic service definition contained in local franchises, rather than the "first tier" definition included in S.66.
- * Retention of the Wilson Amendment substituting the California rate deregulation law for the S.66 rate provision.
- * Removal of the S.66 presumption or expectancy of renewal on the part of a cable company holding a franchise. Rather, the U.S. Conference proposes a "fair renewal process."
- * Elimination of the S.66 "escape clause," permitting cable operators to remove services, facilities and equipment based on an unilateral assertion of "a significant change of circumstances" since the franchise enactment.
- * Authority for local governments to mandate public, educational and governmental access to cable communications systems.
- * Elimination of the S.66 provision that limits the ability of local governments to negotiate the purchase price of a cable system if there is a material breach in the franchise agreement.

National League of Cities Action

Despite the NLC leadership support of S.66, the NLC Communications and Transportation Committee has recommended that NLC not oppose any member city or state league (such as the League of California Cities) from seeking S.66 amendments in the House on "true grandfathering" and "competitive renewal processes."

The NLC committee also criticized Mayor Royer for violating the NLC policy development process in negotiating the final terms of the "compromise" with the National Cable Television Association. The Committee reiterated

June 20 , 1983



its earlier opposition to S.66.

S.66 California Network

If you wish to continue to receive this fan out report, please complete the attached form and return it to us.

Further Information

Don't hesitate to contact me or Jim Barnes or Mike Stover of our staff (phone 213x866-9771) or Len Simon of the U.S. Conference of Mayors (phone 202x293-7330) if you have any questions.

PEZ:kp

Jacqueline Rynerson
Vice Mayor

G. C. (Dee) DeBaun
Council Member



Paul E. Zeltner
Mayor

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PEZ:kp

S.66 NETWORK FOR LOCAL CABLE AUTHORITY

Please add us to the informal "network" of California cities working together to protect local cable franchises and our rights to refranchise.

City _____

Contact Person _____

Title _____

Street _____

ZIP _____

Telephone _____

Our Congress Member(s) is _____

Return to:
Mayor Paul E. Zeltner
City of Lakewood, 5050 Clark Avenue, Lakewood CA 90712
(213) 866-9771

Mayor Richard S. Caliguiri
Pittsburgh
Mayor Lewis C. Murphy
Tucson

Federal Cable Television
Legislation and the Cities

- 1) WHEREAS, cable television is an important communications and information technology for the nation's cities; and
- 2) WHEREAS, provision of cable television service has already proven to be a valuable service to hundreds of communities across the country, and holds great potential promise to all cities in the United States; and
- 3) WHEREAS, the cable television industry is thriving and growing in the United States, with large return on investment and likelihood of even more considerable profit in the future; and
- 4) WHEREAS, local governments have had the responsibility for franchising cable television systems in their cities and for overseeing the implementation of those franchises once awarded; and
- 5) WHEREAS, the franchising process has been a model of the free marketplace at work, with enormous competition between cable companies for the privilege to provide exclusive service within a community; and
- 6) WHEREAS, cable television, because it will likely enjoy exclusivity within a community and will be the only telecommunications medium with a direct link to the homes of citizens with its facilities traversing the public's property; and
- 7) WHEREAS, the presence of a strong local government role in overseeing of franchise agreements has worked to ensure that contractual obligations are carried out and the public interest served; and
- 8) WHEREAS, the best approach to franchising, oversight of the franchise, and resolution of problems which may occur from time to time in carrying out franchise elements, has been the direct negotiation between local governments and cable companies, unfettered by the presence of third parties; and
- 9) WHEREAS, local governments, recognizing the need for and success of direct relationships between cities and cable companies, have sought to discourage unnecessary involvement in these matters by the Congress and the Courts; and
- 10) WHEREAS, cities, working together and with a broad coalition of concerned interests including representatives of labor, education, consumers, telecommunications, rural and utility interests, have helped to defeat in recent years broad attempts to remove local governments from their central role in the cable television process; and

- 11) WHEREAS, federal cable television legislation is again being considered by the Congress, with legislation pending before the full Senate and hearings having commenced at the Subcommittee level in the House of Representatives; and
- 12) WHEREAS, there is a possibility that a strong, bi-partisan effort will be made by the Congress to enact federal cable television legislation in the coming months; and
- 13) WHEREAS, the proposal currently pending before the full Senate is an improvement over the versions which preceded it, and
- 14) WHEREAS, members of the House and Senate who have worked closely with the nation's cities in a broad variety of areas, fully understanding the traditional and appropriate opposition of local governments to such legislation, will be looking to the nation's Mayors for leadership and direction in improving whatever proposals are forthcoming,
- 15) NOW, THEREFORE, BE IT RESOLVED that the U.S. Conference of Mayors reaffirms its view that federal cable television legislation restricting the traditional responsibilities which have been exercised by local governments in this area is not appropriate; and
- 16) BE IT FURTHER RESOLVED that if federal cable television legislation continues as a possibility, that the U.S. Conference of Mayors shall work to ensure that, to the extent possible:
 - federal cable legislation not limit the option of local governments to regulate the rates charged by cable television companies for basic service, should cities believe it in the public interest;
 - federal cable legislation not limit the option of local governments to define by negotiation with cable television companies the definition of basic service;
 - federal cable legislation provide maximum competition in the franchise renewal process with no presumption or expectancy of renewal on the part of the cable company holding the franchise;
 - federal cable legislation "grandfather" all existing franchises, and their terms and conditions and all franchise processes in which a Request for Proposal has been issued; and that federal legislation not apply to renegotiated franchise agreements, signed within six months of enactment;
 - federal cable legislation not provide cable companies with the power to abrogate contractual obligations based on a unilateral assertion of a significant change in circumstances;

- federal cable legislation not limit the ability of local governments to mandate public, educational, governmental, and leased access to cable television;
- federal cable legislation not limit the ability of local governments to negotiate the purchase price of a cable system if there is a material breach in the franchise agreement;
- federal cable legislation not define franchise fees to include taxes, fees, or other assessments, imposed by the franchising authority or other governmental authorities on cable system operators or cable subscribers; and

- 17) BE IT FURTHER RESOLVED by the U.S. Conference of Mayors that Congress is urged to closely examine the possibility of federal legislation in the areas of minimum technical standards, minimum privacy standards, minimum cross ownership provisions, minimum third party access standards, and minimum standards for interconnection; and
- 18) BE IT FURTHER RESOLVED that in working with Congress in the whole area of cable television legislation, the U.S. Conference of Mayors shall be guided by the principle of preserving existing municipal authority in the cable television field, which has greatly benefited the cable television industry, the cities, and the nation.

vantage with other providers of telecommunications services; and

"(4) eliminate government regulation in order to prevent the imposition of an unnecessary economic burden on cable systems in their provision of service to the public.

DEFINITIONS

"Sec. 603. for purposes of this title, the term—

"(1) 'basic service' means the lowest cost tier, other than a tier offered at a discounted fee, of service which is available to subscribers for a fee and which includes the provision of retransmission of local broadcast signals, public, educational, and governmental programming and any other programming service as offered by a cable operator as part of the tier, and specified in the franchise agreement as part of basic service, which is distributed by coaxial cable or any other closed transmission medium;

"(2) 'basic telephone service' means two-way voice grade communications that is held out to the public and that would be subject to regulation by the Commission or any State if offered by a common carrier subject, in whole or in part, to title II of this Act;

"(3) 'broadband telecommunications' means any receipt or transmission of electromagnetic signals, including basic service, cable service, and telecommunications service, over coaxial cable or any other closed transmission medium;

"(4) 'broadcasting' means telecommunications by radio intended to be received by the public, directly or by the intermediary of relay stations;

"(5) 'cable channel' or 'channel' means that portion of the electromagnetic frequency spectrum used in a cable system for the propagation of an electromagnetic signal;

"(6) 'cable operator' or 'cable system operator' means any person or persons, or an agent or employee thereof, that provides basic service, cable service, or telecommunications service over a cable system, or that directly or indirectly owns a significant interest in any cable system, or that otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;

"(7) 'cable service' means the provision by a channel programmer of one-way programming on a per channel, per program, or other basis which is distributed by coaxial cable or any other closed transmission medium, but such term shall not include basic service;

"(8) 'cable subscriber' means any person who receives or transmits electromagnetic signals distributed over a cable system;

"(9) 'cable system' means a facility or combination of facilities under the ownership or control of any person or persons, which consist of a primary control center used to receive and retransmit, or to originate broadband telecommunications service over one or more coaxial cables, or other closed transmission media, from the primary control center to a point of reception at the premises of a cable subscriber, but such term does not include: (A) a facility or combination of facilities that serves only to retransmit the television signals of television broadcast stations; (B) a facility or combination of facilities that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management; or (C) a common carrier subject to the provisions of title II of this Act whenever such carrier transmits broadband telecommunications services other than basic service or cable service;

"(10) 'channel programmer' or 'programmer' means any person having an agreement to provide basic service or cable service to a cable system operator, or any person who

leases, rents, or is otherwise authorized to use the facilities of a cable system for the provision of basic service or cable service, and such term shall include a cable system operator to the extent that such operator, or person or persons under common ownership or control with such operator, is engaged in the provision of such service;

"(11) 'closed transmission medium' or 'closed transmission media' means media having the capacity to transmit electromagnetic signals over a common transmission path such as coaxial cable, optical fiber, wire, waveguide, or other such signal conductor or device;

"(12) 'franchise' means a permit, license, ordinance, resolution, right-of-way, contract, certificate, agreement, or similar authorization issued by a franchising authority which authorizes the provision of basic service, cable service, or telecommunications service by a cable operator;

"(13) 'franchising authority' means any State, political subdivision, or agency thereof, or any other governmental entity empowered to grant a franchise;

"(14) 'grade B contour' means the field strength of a television broadcast station computed in accordance with regulations promulgated by the Commission;

"(15) 'information' means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or other symbols;

"(16) 'law' includes any regulation, rule, order, standard, policy, requirement, procedure, or restriction;

"(17) 'person' means an individual, partnership, association, joint stock company, trust, corporation or any governmental authority;

"(18) 'telecommunications' means the transmission of information by electromagnetic means, with or without benefit of any closed transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission;

"(19) 'telecommunications service' means the offering of telecommunications facilities, or of telecommunications but such terms shall not include basic service or cable service; and

"(20) 'United States' means the several States and territories, the District of Columbia, and the possessions of the United States.

STATEMENT OF AUTHORITY

"Sec. 304. The provisions of this title shall apply as follows:

"(1) The Commission shall have jurisdiction and exercise authority with respect to broadband telecommunications in accordance with the provisions of this title and other applicable provisions of law.

"(2) Nothing in this title shall be construed as prohibiting any State or political subdivision or agency thereof, or franchising authority, from awarding, in accordance with the provisions of this title, one or more cable franchises within its jurisdiction.

"(3)(A) Except to the extent provided in paragraph (B), no cable system shall provide basic service or cable service without a cable franchise in compliance with this title.

"(B) The provision of paragraph (A) shall not be applicable in the case of any cable system in operation on April 21, 1983.

OWNERSHIP OR CONTROL OF CABLE SYSTEMS

"Sec. 605. (a) No State or political subdivision or agency thereof, or franchising authority, shall have the authority to prohibit, directly or indirectly, the ownership of cable systems by any person by reason of that person's ownership of any other media

So the bill (S. 66), as amended, was passed as follows:

S. 66

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Cable Telecommunications Act of 1983".

(b) The Communications Act of 1934 is amended by inserting immediately after title V the following new title:

TITLE VI—CABLE TELECOMMUNICATIONS ACT

FINDINGS

"Sec. 601. The Congress hereby finds that—

"(1) cable systems are engaged in interstate commerce through the origination, transmission, distribution, and dissemination of broadband telecommunications services;

"(2) the provision of broadband telecommunications is of concern to governmental entities;

"(3) a uniform national policy for broadband telecommunications can serve to eliminate and prevent conflicting and counterproductive regulations in order to allow unhampered growth and development of cable as a competitive medium which will be responsive to and serve the needs and interests of the public;

"(4) competition is a more efficient regulator; and

"(5) government of the provision of diverse telecommunications services and as competition continues to develop, the deregulation of telecommunications services should occur; and

"(6) recognizing the long standing tradition of the Congress of promoting universal telephone service at reasonable rates, and recognizing the rapid technological changes of the types and delivery of services offered by the telecommunications industry, it is in the public interest to ensure that all providers of telecommunication services share in the obligation of providing universal service.

PURPOSES

"Sec. 602. The purposes of this title are to—

"(1) establish a national policy concerning broadband telecommunications and to encourage a competitive environment for the growth and development of broadband telecommunications;

"(2) establish guidelines for the exercise of Federal, State, and local regulatory authority;

"(3) allow cable systems to be responsive to the needs and interests of the public on an equal basis without a competitive disadvantage with other providers of telecommunications services; and

or other interests, including broadcast, cable, newspaper, programming service, or other printed or electronic information service.

"(b)(1) Notwithstanding the provisions of subsection (a) of this section, for the purpose of ensuring fair and equitable treatment of United States cable enterprises seeking access to markets in a foreign country, the Commission shall have authority to conduct inquiries applicable to foreign persons from that country seeking access to domestic markets in the United States in connection with the construction, ownership and operation of cable enterprises as to whether such United States cable enterprises are permitted fair and equitable access to such foreign markets.

"(2) The Commission shall submit any information obtained through such inquiries to the United States Trade Representative to assist the Trade Representative in his identification and analysis of acts, policies or practices which constitute significant barriers to, or distortions of, United States exports of services.

"(3) For purposes of this subsection, the term 'foreign persons' includes any individual who is not a citizen of the United States, any subsidiary (although established under the laws of the United States or any State thereof) of a corporation or other business entity which was established under the laws of a foreign country, any corporation or other business entity established under the laws of a foreign country, or any corporation or other business entity established under the laws of the United States or any State thereof, if 25 percent or more of the capital stock or equivalent ownership is owned or controlled by an individual who is not a citizen of the United States or by a corporation or other business entity established under the laws of a foreign country, or any subsidiary of a corporation or other business entity established under the laws of a foreign country.

"(c)(1) Notwithstanding the provisions of subsection (a) of this section, a State or political subdivision or agency thereof, or franchising authority, may not acquire an ownership interest in any cable system pursuant to a buy-back provisions of a franchise or require a sale of a cable system to any other person pursuant to a franchise, upon the expiration of the franchise, unless such State, subdivision, agency, authority, or person acquires such ownership or interest at not less than fair market value based upon the on-site inspection of the system. In the event that the cable operator and a State or political subdivision or agency thereof, or franchising authority, are unable to agree upon any such fair market value, then the matter of determining fair market value shall be submitted to binding arbitration. For purposes of arbitration, each of the affected parties shall select one arbitrator and the two arbitrators so selected shall choose a third arbitrator.

"(2) Notwithstanding the provisions of paragraph (1) of this subsection, in the event of termination for cause of a franchise due to a material breach, a State or political subdivision or agency thereof, or franchising authority, may acquire an ownership interest in such cable system but only upon written notice of the breach, reasonable opportunity to remedy the breach, and other due process. Any such termination shall be subject to de novo review by a court of competent jurisdiction.

"(d) In any case in which any such State, subdivision, agency, or authority has or acquires any such ownership or interest, such State, subdivision, agency, or authority shall, in no case, own or control, directly or indirectly, the content of any of the pro-

gramming on such cable system, except for programming on government access channels, unless such State or political subdivision or agency thereof, or franchising authority, establishes an independent board or a separate management company. Such board or company shall not include any State or local office holder.

"ACCESS CHANNELS

"Sec. 806. (a) A cable system operator may be required, as part of the franchise request for proposals, to dedicate or set aside channels for public, educational or governmental users, and the cable system operator may offer in a franchise to dedicate or set aside channels for other channel users.

"(b) The franchising authority and the cable operator may establish rules and procedures for the use of the channels set aside or dedicated pursuant to this section.

"(c) Until such time as there is demand for each channel full time for its designated use, public, educational, governmental, or other channel programming may be combined by the cable system operator on one or more channels, and to the extent time is available on such channels, they may be used by the cable system operator for the provision of other services.

REGULATION OF RATES AND SERVICES

"Sec. 807. (a) Nothing in this title shall be construed as prohibiting any State or political subdivision or agency thereof, or franchising authority, from establishing, fixing, or otherwise restricting the rates charged by cable operators—

"(1) to subscribers for the receipt of basic service,

"(2) to subscribers for equipment necessary for the receipt of basic service, and

"(3) to subscribers for equipment which facilitates the reception of basic service by hearing impaired individuals.

"(b)(1) Any rate regulated pursuant to this section may be increased annually at the discretion of the cable operator by an amount not to exceed the regional consumer price index for the preceding 12 months, upon 30 days prior notice. The ability to affect such increases shall be cumulative for not more than 3 successive years.

"(2) Notwithstanding the provisions of paragraph (1) of this subsection, nothing in this title shall be construed as prohibiting any State or political subdivision or agency thereof, or franchising authority, from providing that such automatic increases shall not apply to a franchise which is in existence on the date of the enactment of the Cable Telecommunications Act of 1983 and which provides for a fixed rate for basic service over a specified period.

"(c) Notwithstanding the provisions of subsections (a) and (b) of this section, a cable system operator may automatically increase basic service rates which exceed the basic rates allowed pursuant to subsection (a) or (b) of this section if—

"(1) such operator has requested the increase in rates; and

"(2) the request is not acted on within 90 days following the date of its receipt.

"(d)(1) Notwithstanding the provisions of subsection (a) of this section, the authority to establish, fix, or otherwise restrict the rates charged to subscribers for the provision of basic services set forth in subsection (a) of this section, except to the extent otherwise provided by paragraph (2) of this subsection, shall not be applicable in any case where the cable system is located within the grade B contour of not less than four television signals of which there shall be one affiliate of each of the three major television networks.

"(2) The provisions of paragraph (1) of this subsection shall not be applicable in the

case of any franchise in existence prior to the date of the enactment of the Cable Telecommunications Act of 1983, if the rates charged to subscribers for the provision of basic services are subject to regulation or are restricted by any State or political subdivision or agency thereof, or any franchising authority. The provisions of this paragraph relating to existing rate regulation of basic service shall be applicable for a period of 5 years following the date of the enactment of such Act, or for a period equal to one-half of the period of the remaining term of such franchise, as of the date of the enactment of such Act, whichever is greater. The provisions of paragraph (1) shall be applicable to any renewal or other extension of any such franchise.

"(3) The provisions of paragraph (1) of this subsection shall not be applicable where the cable system is subscribed to by at least 80 percent of the residences to which cable service is available, unless the cable operator demonstrates that 90 percent of the time, adequate on-site reception of the four television signals is available to more than 50 percent of the households to which cable service is available. Such a determination shall be made by the Commission. Failure by the Commission to make a determination within 180 days after the filing of an application by the cable operator shall be deemed to be a determination that such satisfactory reception is available.

"(e) No executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, or franchising authority, shall have authority to regulate or restrict the rates for reconnection, additional sets to the same subscriber, or sales of equipment.

"(f) No executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, or franchising authority, shall have authority to regulate or restrict the provision of or nature of cable services offered over a cable system except as provided in section 613 of this Act.

"(g)(1) No executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, or franchising authority, shall have authority to regulate or restrict the provision of or nature of telecommunications services offered over a cable system, except with respect to the provision of basic telephone service, intrastate telecommunications services, and except as provided in section 613 of this Act.

"(2)(A) Subject to the provisions of subparagraph (B), a State may require only the filing of informational tariffs for intrastate telecommunications services that would be subject to regulation by the Commission or any State if offered by a common carrier subject, in whole or in part, to title II of this Act, which are offered over a cable system. Such informational tariffs shall specify only the rates, terms, and conditions for the provision of service and shall take effect on the date specified therein.

"(B) Subparagraph (A) shall not apply to any private telecommunications service which is a discrete service dedicated to a single customer and operated by such customer.

"(3) A State shall deregulate the provision of intrastate telecommunications services if it finds that such services are subject to effective competition.

"(4) For purposes of this subsection, an intrastate telecommunications service shall be considered to be subject to effective competition in a particular geographic area or market if there are reasonably available alternatives. In determining whether there

are reasonably available alternatives, the State shall consider—

“(A) the number and size of providers of services;

“(B) the extent to which services are available from providers in the relevant geographic area or market;

“(C) the ability of such providers to make services readily available at comparable rates, terms, and conditions; and

“(D) other indicators of the extent of competition, including affiliation of providers of services.

“(5) Nothing in paragraphs (2), (3), and (4) of this subsection shall be construed as being applicable to basic telephone service.

“(h) Nothing in this Act shall be construed as prohibiting a franchising authority and a cable operator from specifying, in a franchise agreement or renewal thereof, that certain cable services shall not be provided or shall be provided subject to conditions, if such cable services are obscene or are otherwise unprotected by the United States Constitution.

“(i) The provisions of subsections (b), (c), and (d) shall not apply to a franchise agreement in existence on the date of enactment of this Act for a period of 5 years following the date of enactment of this Act, or for the remaining term of such franchise agreement, whichever is greater, in any State which has in effect, and has had in effect since January 1, 1983, a statutory scheme deregulating rates which contains a requirement regarding minimal channel capacity.

FRANCHISE FEES

“Sec. 608. (a) Cable operators may be required in a franchise to pay to a State or political subdivision or agency thereof, or franchising authority, a franchise fee.

“(b)(1) No franchise fee paid by a cable system operator for the privilege of holding a franchise, shall exceed an annual aggregate of 5 percent of such cable operator's gross revenues derived from the operation of the cable system which is the subject of the franchise.

“(2) Nothing in this section shall be construed as limiting fees required by a franchise in effect on the date of enactment of the Cable Telecommunications Act of 1983 to be paid directly or indirectly to entities established for the purpose of facilitating the use of channels set aside for public, educational, or governmental use.

“(c) Any cable system operator may pass the cost of any increase in a franchise fee through to subscribers, and may designate the total franchise fee as a separate item on the subscribers' bills.

“(d) For the purpose of this section—

“(1) franchise fee shall include any tax, fee or assessment of any kind imposed by a franchising authority or governmental authority on a cable system operator or cable subscriber because of their status as such; and

“(2) ‘assessment’ shall not include bonds, security funds, letters of credit, insurance, indemnification, penalties, liquidated damages or similar requirements which are incidental to the enforcement of the franchising agreement.

“(e) Nothing in this section shall be deemed to require a cable operator to renegotiate the provisions of an existing franchise.

“RENEWALS AND EXTENSIONS

“Sec. 609. (a) In any case in which a cable system operator submits an application to the franchising authority for the renewal or other extension of such operator's franchise authorization, the franchising authority shall grant such renewal or other extension unless it finds that—

“(1) the cable system operator has not substantially complied with the material

terms of such franchise and with applicable law, or has been convicted of a felony;

“(2) there has been a material change in the legal, technical, or financial qualifications of the cable system operator that would substantially impair the continued provision of service by such operator;

“(3) the facilities to be provided by such operator, including facilities for governmental access, are unreasonable in light of the community need for and cost of such facilities;

“(4) the signal delivered by the cable system within the control of the cable system operator, has not generally met technical standards as established by the Commission; or

“(5) the proposals contained in the renewal application are otherwise unreasonable.

“(b) A cable system operator must file for renewal at least 24 months, but not more than 36 months, before expiration of the franchise. The franchising authority must consider the renewal within 120 days of submission of the application and conduct any proceedings necessary to adequately consider the application.

“(c) A cable system operator with a franchise which shall expire within 24 months after the date of enactment of the Cable Telecommunications Act of 1983, shall be in compliance with subsection (b) if he files an application for renewal within 60 days after such date of enactment.

“(d) The franchising authority shall—

“(1) negotiate in good faith with any cable system operator regarding franchise renewal within 30 days after the completion of proceedings pursuant to subsection (b); and

“(2) make a final decision on granting or denying renewal within 12 months after receipt of an application;

“(3) in the case of denial of an application—

“(A) not make the final decision for at least 7 months from the date of receipt of the application; and

“(B) notify the applicant by written statement, within 7 days after the final decision, of the reasons for the denial.

“(e) Any renewal applicant adversely affected or aggrieved by a final decision of a franchising authority made pursuant to subsection (d), or by a failure of the franchising authority to act in accordance with subsection (d), may obtain judicial review of such final decision in any court of competent jurisdiction. The existing franchise shall remain in effect pending the completion of such judicial review. Such judicial review shall be de novo, unless the renewal applicant has been afforded a hearing on record before an independent hearing examiner or administrative law judge consistent with State law that requires—

“(1) adequate notice;

“(2) fair opportunity for participation by the renewal applicant, which includes—

“(A) discovery;

“(B) the filing of pleadings, motions, or objections;

“(C) the introduction of written or oral testimony; and

“(D) cross-examination of opposing parties; and

“(3) a written decision by the examiner or judge based exclusively on the full record of the hearings and stating the specific findings of fact and conclusions of law on which the decision is based.

“UNAUTHORIZED INTERCEPTION OR RECEPTION

“Sec. 610. (a) No person or government authority shall intercept or receive broadband telecommunications unless specifically authorized to do so by a cable system operator, channel programmer, or originator of broadband telecommunications or as may

otherwise be specifically authorized by Federal law.

“(b) In order to safeguard the right to privacy and security of broadband telecommunications, such broadband telecommunications shall be deemed to be a ‘wire communication’ within the meaning of section 2510(1) of title 18 of the United States Code.

“(c) In the event that there may be any difference between the provisions of this section and chapter 119 of title 18 of the United States Code, or any regulations promulgated thereunder, it is the intent of the Congress that such chapter 119 shall be controlling.

PROTECTION OF SUBSCRIBER PRIVACY

“Sec. 611. (a)(1) Except as provided in paragraph (2) of this subsection, no cable operator, channel programmer, or originator of broadband telecommunications may use the cable system to collect personally identifiable information with respect to a cable subscriber, except upon the prior written or electronic consent of that subscriber.

“(2) The provisions of paragraph (1) of this subsection shall not apply to the collection of information solely for billing purposes or to monitor whether there is unauthorized reception of cable telecommunications.

“(3) A cable operator, channel programmer, or originator of broadband telecommunications shall ensure that any such information is destroyed when the information is no longer used or to be used for the purposes for which it was collected.

“(b) No cable operator, channel programmer, or originator of broadband telecommunications shall disclose personally identifiable information obtained pursuant to subsection (a) of this section with respect to a cable subscriber, or personally identifiable information with respect to the services provided to or received by a particular cable subscriber by way of a cable system, except upon the prior written or electronic consent of the subscriber, or pursuant to a lawful court order authorizing such disclosure.

“(c) If a court shall authorize or order disclosure, the cable subscriber shall be notified of such order by the person to whom such order may be directed, within a reasonable period of time before the disclosure is made, but in no event less than 14 calendar days.

“(d) Each cable operator shall, prior to entering into an agreement to provide cable telecommunications, and regularly thereafter, inform every subscriber of the rights of the subscriber under this section. Such information shall include a description of the nature of the information to be maintained by the cable operator, channel programmer, or originator of broadband telecommunications, and the location and availability of such information.

“(e) A cable subscriber shall have access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator, channel programmer, or originator of broadband telecommunications. Such information shall be available to the subscriber at reasonable times and at a place designated by the cable operator, channel programmer, or originator of broadband telecommunications.

“(f) Any cable subscriber whose privacy is violated in contravention of this section, shall be entitled to recover civil damages as authorized and in the manner set forth in section 2520 of title 18 of the United States Code. This remedy shall be in addition to any other remedy available to such subscriber.

CRIMINAL AND CIVIL LIABILITY

"Sec. 612. Nothing in this title shall be deemed to affect the criminal or civil liability of channel programmers or cable operators pursuant to the law of libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws, except that cable operators shall not incur such liability for any program carried on any public, educational, governmental, or other channel referred to in subsection (a) of section 606, or for any program required by law to be carried on any other channel.

PROGRAMMING, SERVICES, AND FACILITIES

"Sec. 613. (a) No State or political subdivision or agency thereof, or franchising authority, may require the provision of particular programming or other broadband services, or facilities, equipment, services, or other items of value which are not related to the provision of broadband telecommunications service.

"(b) A franchising authority may require, as part of the franchise request for proposals—

"(1) channel capacity for public, educational or governmental access purposes; and

"(2) the construction of cable system facilities or provision of other cable-related equipment.

"(c) A cable operator may offer, but may not be required to provide, as part of basic service or any other tier of service—

"(1) channel capacity for other access uses; and

"(2) particular services.

"(d) The cable operator may replace or remove a particular service specified in the cable franchise as part of the basic service or any other tier of cable service or telecommunications service in any case in which there has been a significant change in circumstances since the cable operator's offer to provide such service. The cable operator may not be required to retain a specified service in any particular category of service other than basic service.

"(2) In any case in which a cable operator submits a showing that, as a result of a significant change in circumstances, particular facilities and equipment required by the franchise are economically, technically, or otherwise impracticable, the franchising authority shall enter into negotiations with the cable operator for the termination, modification, or deferral of such requirement. If such terms and conditions cannot be agreed upon within 45 days, the matter shall be submitted to binding arbitration. For purposes of arbitration, each of the affected parties shall select 1 arbitrator and the 2 arbitrators so selected shall choose a third arbitrator. The existing franchise provisions, except for those which are the subject of arbitration, shall not be affected by the arbitrators' final decision.

"(e) Except as provided in subsection (c) of this section, a franchising authority may, in accordance with the provisions of this section, enforce any offer to provide particular basic service set forth in subsection (c) or particular cable services or telecommunications services or cable system facilities or cable-related equipment offered by a cable operator provided that the provision of such services, facilities, or equipment is specifically required by the franchise agreement.

"(f) Notwithstanding the preceding provisions of this section, in any case in which a franchise agreement in effect on the date of the enactment of the Cable Telecommunications Act of 1983 requires the cable operator to provide particular programming, services, facilities, cable related equipment, or channel capacity for access uses, such requirements, subject to subsections (d) and (e), shall remain in effect for the term of the

franchise and in accordance with the provisions thereof. For purposes of this subsection, a franchise agreement containing such requirements shall be considered to have been in effect on such date of enactment if such agreement was the result of a franchise proceeding for which a request for proposals was originally issued, however subsequently modified or replaced, on or prior to September 30, 1982.

NO REGULATION AS COMMON CARRIER

"Sec. 614. No executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, or franchising authority, shall have authority to impose on a cable system regulation as a common carrier or a utility to the extent that such cable system provides broadband telecommunications service other than basic telephone service."

EXCLUSIVE JURISDICTION

"Sec. 2. (a) Except to the extent otherwise specifically provided in title VI of the Communications Act of 1934, as added by the first section of this Act and as provided in section 607 of such title, the Federal Government shall have exclusive jurisdiction over broadband telecommunications regarding matters covered by such title.

"(b) Any law of any State or political subdivision or agency thereof, or franchising authority, in effect on the effective date of title VI of the Communications Act of 1934, as added by the first section of this Act, which is in conflict with the provision of subsection (a) of this section relating to the exclusive jurisdiction of the Federal Government, shall be deemed superseded, as of the expiration of the 6-month period following the date of the enactment of this Act, and shall thereafter be null and void and of no effect.

"(c) Except to the extent otherwise provided by this Act and the amendments made thereby, any State or political subdivision or agency thereof, or franchising authority, may exercise jurisdiction over matters which are of strictly local concern and which are necessary for reasons of public health, safety, and welfare, including the terms and conditions for the granting of a franchise, the construction and operation of a cable system, and the enforcement and administration of a franchise.

NEW AND ADDITIONAL SERVICES

"Sec. 3. Title I of the Communications Act of 1934 is amended by inserting after section 6 the following new sections:

NEW AND ADDITIONAL SERVICES

"Sec. 7. (a) Consistent with sound spectrum management, the Commission shall, to the maximum feasible extent, encourage the introduction of new and additional services by new applicants, existing licensees, or other persons. In any proceeding in which new or additional services are proposed, such services shall be presumed to be in the public interest whenever the Commission finds that such services are technically feasible without causing significant technical degradation to or interference with radio transmissions by other licensees.

"(b) Any person may file with the Commission a petition to establish or an application to offer a new or additional service.

"(c) The Commission must determine whether the new or additional service proposed in a petition or application is in the public interest within 1 year after such petition or application is filed. If the Commission initiates its own proceeding for a new or additional service, such proceeding must be completed within 12 months after it is initiated.

DECLARATION

"Sec. 8. The Congress declares that competition is a more efficient regulator than government of the provision of diverse communications services and as competition continues to develop, the deregulation of communications services should occur."

EFFECTIVE DATE

"Sec. 4. The provisions of this Act and the amendments made thereby shall take effect upon the date of enactment of this Act.

REDESIGNATION

"Sec. 5. The existing title VI of the Communications Act of 1934 is redesignated as title VII, and sections 601 through 609 are redesignated as sections 701 through 709, respectively.



UNITED STATES CONFERENCE OF MAYORS

1620 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
TELEPHONE: (202) 293-7330

STATEMENT OF

THE HONORABLE BOB BOLEN
MAYOR, CITY OF FORT WORTH

on behalf of

THE UNITED STATES CONFERENCE OF MAYORS

on

CABLE TELEVISION AND THE CITIES

before the

SUBCOMMITTEE ON TELECOMMUNICATIONS, CONSUMER
PROTECTION AND FINANCE

COMMITTEE ON ENERGY AND COMMERCE

UNITED STATES HOUSE OF REPRESENTATIVES

May 25, 1983

Mr. Chairman and members of the Subcommittee, I am Bob Bolen, Mayor of the City of Fort Worth, Texas. I am here this morning on behalf of my city and the U.S. Conference of Mayors, which represents the Mayors of the nation's principal cities.

The Conference appreciates the opportunity to present our views to the Subcommittee this morning. Our policy on cable television is attached to the back of this statement, and underscores the very strong belief of most Mayors that an overriding need for such legislation has yet to be demonstrated. Without federal legislation, municipal corporations and private firms have negotiated freely in an open market for the delivery of cable television services. The cable television franchise is an example of a system working well. Where bid requirements are excessive, or deemed too costly, cable television companies are free to decline participation, thereby informing the city that they do not view the city's cable market as profitable under the city's conditions. Nor are cable operators forced to sign a contract that is unacceptable to them. The terms of a cable franchise agreement can be negotiated openly, and if provisions are proposed that are unacceptable to either party, no contract is signed, both parties must accept the contractual document when it is signed by the respective sides. Signing the agreement implies acceptance of its provisions.

All institutional arrangements can stand improvement. But by and large, we believe that the cable company/local government relationship has worked well -- the rapid wiring of urban America is good evidence of this fact. And, where problems do from time to time emerge, we

believe that the tool of negotiation has, can, and will be used to solve those problems.

Mr. Chairman, if it is nevertheless the intention of this Subcommittee to achieve federal legislation in this area, we strongly hope that the Subcommittee will commit to the nation's Mayors now that it will begin the process with an open mind and a clean slate. We, in turn, will pledge to work earnestly with the Subcommittee and its staff to achieve a legislative product that is consistent with the public interest. And, Mr. Chairman, I want it to be stated very clearly and for the record, that the federal government does not have a monopoly or concern for the public interest in cable television. In the franchising process, and in the oversight of the implementation of franchises, city governments search and work for, not the narrow concerns of what might be best for city governments, but for the best public interest. The public interest has been our goal and always will be.

Mr. Chairman, it is well known that S.66, "The Cable Telecommunications Act of 1983," as recently reported by the Senate Committee on Commerce, Science and Transportation, although an attempt to achieve agreement where conflict has existed, causes problems for many cities -- those with franchises existing, and those which hope to have franchises soon.

While efforts to achieve a compromise are to be commended, it must be understood that the negotiations which brought about S.66 were commenced by the Senate's clear threat of "a worse bill." It is our hope that the House, if it should decide to go forward, would concentrate on

good legislation which makes sense to cities, is fair to cable, and will dispense with threats and coercion.

Mr. Chairman, our key concerns with S.66 could be detailed in the following manner.

Definition of Basic Service and Rate Regulation

S.66 defines basic service as the lowest-cost tier (non-discounted) of service which includes the must-carries and the access channels. It is only this portion of basic cable service to which any local rate regulation can be applied. In this definition of basic service, "competitive" market is declared, and the cable rate structure is deregulated completely. Then, what little rate regulation remains (after applying the "four over-the-air channel criterion") is to be erased after several years. In addition, operators are permitted automatic CPI-based rate increases each year, making cable the only locally franchised consumer service that is guaranteed rate increase every year. This definition of basic service is deficient on a number of grounds. First, basic service must be defined, at an absolute minimum, as all non-premium (i.e., non-pay) channels available to the consumer. A further valuable step would entail an explicit definition of basic service in a manner that specifies the channel/service components of "basic service." In this mode, basic service would be defined as: 1) must-carry over-the-air stations; 2) any low-power TV stations licensed in the area, 3) all access channels; 4) any local origination channels (i.e., operator-programmed channels); and 5) all other non-premium cable channels.

The Federal Communications Commission's pre-emption of local authority to regulate pay-service rates makes it imperative that local

governments retain the ability to regulate non-pay service rates. As it now stands, cable operators are free to escalate pay-service prices without limit (notwithstanding the "market"), to the point that in many cable systems, CATV operators receive from subscribers double and triple the price the operator pays to the pay-service providers. In this free "market," the subscriber doesn't really have the choice of movie or arts or sports channels -- instead, the choice is to subscribe or not subscribe to the only such services available. Conversely, basic (non-pay) services are received by a cable operator free of charge, or for a few pennies per subscriber; in the vast majority of instances, the basic cable rate clearly covers the operator's costs of payment to the basic service supplier. Eliminating local government's authority to regulate these basic rates only increases the cable operator's ability to extract monopoly profits and surplus revenue from cable subscribers.

Mr. Chairman, rate regulation is important to be retained from our perspective, as a basic tool to protect the public interest by insuring that the terms of the franchise agreement are being properly implemented by the cable company. Most rate increases are fairly routinely approved -- following assessment by the city that all else is well -- a practice followed with respect to virtually every other franchise. We believe it extremely important to retain the right to regulate rates for non-pay services.

Franchise Renewal

Mr. Chairman, Mayors also have a very deep sense of concern regarding the franchise renewal sections of S.66. We strongly believe that

although S.66 contains some caveats and attempts at balance, it nevertheless contains a presumption for renewal of the existing franchise that in many cases would be difficult to rebut, and would undoubtedly place the burden of proof on the city government. Franchise agreements are long -- usually some 15 years -- ample time for a cable company to make and recoup its full investment with considerable profit. Cities should have the option at that point, particularly given the promised advances in franchise sophistication and technology, to start fresh without proving insufficiency on the part of the existing franchisee, and leaving itself open to potential court challenges. If an existing franchisee is up to the competition, then the marketplace will prevail in its favor.

Enforcement of Existing Franchise Agreements and Contracts

Another troublesome aspect of S.66 to Mayors concerns what S.66 refers to as " ... significant change(s) in circumstances." What this term refers to is the cable operator's ability patently to renege on earlier contractual commitments agreed to during the franchising process and subsequent franchise agreement. At face value, such a requirement seems relatively innocent, especially when explained in terms of examples like The Entertainment Channel, CBS Cable, or the changing fee structure of the Copyright Royalty Tribunal.

This "changed circumstances" provision is a potential Pandora's box for cities. If the cable company truly believes that circumstances have changed significantly enough to warrant a change of service, then that should be the subject of negotiations between the franchising authority and the company, and not a unilateral decision on the part of the company.

This type of one-sided action could pose a real and grave threat to the integrity of the franchising process. No simple waiver of contractual commitments should be permitted.

Retroactivity

Mr. Chairman, any cable legislation undertaken by this Subcommittee should "grandfather" existing franchises, their terms and conditions, and franchise processes in which an RFP has been issued or franchise applications have been accepted. Franchises were freely entered into by both parties. Possible accommodations in the future could be made. But any attempt on the part of federal legislation to make "null and void" any aspect of franchises is clearly wrong and not in the public interest.

Third Party Access

Federal legislation should also not curtail the ability of cities and cable companies to negotiate levels for third party, public, governmental, and leased access channels. This is the very heart of designing and implementing a franchise which fits the public interest and ensures that cable will reach its potential to serve our communities. While federal floors may be appropriately considered, certainly federal ceilings would be inappropriate.

Conclusion

Mr. Chairman, on behalf of the U.S. Conference of Mayors, I wish to express appreciation for having the opportunity to present our views this morning. We believe that the case has not been made for cable legislation, although we fully understand the tumultuous factors which have induced it in the Senate. We urge that if you decide to proceed,

that it be with caution, in an open atmosphere, and with due consideration to all of the elected officials whose primary concern is the public interest.

I would be pleased to take any questions the Subcommittee might have.



SACRAMENTO METROPOLITAN

Cable Television Commission

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SUITE 2500, 700 'H' ST., SACRAMENTO, CA 95814 • (916) 442-6611

ROBERT E. SMITH
EXECUTIVE DIRECTOR

June 2, 1983

To: Mayor and Council
City Manager

From: Speranza Avram, Cable Coordinator *Sp*
U.S. Conference of Mayors Cable Task Force

Subject: S.66 FAN OUT NETWORK REPORT

Action Requested

Please:

1. Contact Senators Alan Cranston and Pete Wilson by June 13, and urge them to support the Amendments to S.66 submitted by Senators Lautenberg, Exon, Boschwitz and Durenberger. A letter from the U.S. Conference of Mayors outlining their position is attached. A full explanation of the amendments will be submitted to the Senate the week of June 6th.
2. Contact Representatives Jim Bates, Carlos Moorhead, Henry Waxman, and your own Congressman in support of preparing a cable communications bill that would protect state and local decision making and freely negotiated commitments regarding cable franchises and refranchising. Please indicate support for the U.S. Conference of Mayors "framework" for a cable communications law.
3. Contact your State Senator(s) and Assembly Member(s) to support Assembly Joint Resolution 60 memorializing Congress to amend S.66 to protect state and local authority over cable franchises and to protect the cable consumers from cable operator abuses.

Background and Developments

Efforts are underway in the Senate to further delay a vote on S.66 until the week of June 20. As of now, however, debate and voting on S.66 is scheduled for June 13-14. Senators Lautenberg, Exon, Boschwitz and Durenberger have submitted amendments which improve S.66 slightly. Senators Wilson and Cranston need to hear by June 13 that your city supports these amendments.

The House Telecommunications Subcommittee held the first day of hearings last week on a federal cable communications bill. Representatives Bates,

Moorhead and Waxman are members of the House Subcommittee. A cable industry-initiated effort is underway to have a House cable bill reflect the provisions of S.66. It is important that we contact our Congressional representatives in support of the U.S. Conference of Mayors "framework" for a cable communications bill. The U.S. Conference framework supports local authority.

The National League of Cities will reconsider the S.66 "compromise". The "compromise" has been increasingly renounced by American cities. Over 125 cities and four state leagues, including the League of California Cities, have rejected the "compromise" in favor of a more even-handed federal cable bill. Last weekend, the 63-city California Contract Cities Association voted unanimously for a resolution opposing S.66 in its current form and calling for constructive amendments to protect local authority and cable subscribers. NLC's Transportation and Communications Steering Committee will reconsider the "compromise" June 3-4 in Washington, D.C. The NLC Board of Directors will review the "compromise" in July. The original "compromise" was taken to the NLC Board of Directors without recommendation from the NLC's Cable Task Force or Transportation and Communications Steering Committee. The official NLC policy, however, remains in support of S.66. The fact of the matter is that the more pressure NLC has received, the better the "compromise" has become. The "compromise" has been modified three times by NLC after receiving pressure from member cities.

Assembly Member(s) Gwen Moore and State Senator Joe Montoya, who chair the Assembly and State Senate committees on cable communications have introduced a bi-partisan resolution calling upon Congress to amend S.66 to protect state and local authority over cable communications. State Senate co-sponsors of AJR 60 are Herschel Rosenthal (D-Los Angeles), Bill Greene (D-Los Angeles), Ollie Speraw (R-Long Beach), Art Torres (D-Los Angeles) and Diane Watson (D-Los Angeles). Assembly co-sponsors are: Doris Allen (R-Orange), Bruce Cronzan (D-Fresno), Charles Calderon (D-Montebello), Lloyd Connelly (D-Sacramento), Jim Costa (D-Fresno), Nolan Frizzelle (R-Fountain Valley), Teresa Hughes (D-Los Angeles), Richard Robinson (D-Santa Ana), Steve Peach (D-Chula Vista) and Byron Sher (D-Carlsbad). Please contact your members of the State Legislature in support of AJR 60. Also contact State Senator Joe Montoya and Assembly Member Gwen Moore in appreciation of their efforts to preserve local authority over cable communications.

Further Information

Don't hesitate to contact me (916-440-6661) or Len Simon of the U.S. Conference of Mayors (phone 202-293-7330) if you have any questions.

URGENT!

RUMOR

TO: The Mayor

FROM: John J. Gunther
Executive Director *John Gunther*

SUBJECT: Cable Television Legislation --
Senate Set to Vote

DATE: May 31, 1983

The Senate is set to debate and vote on S.66, "The Cable Telecommunications Act of 1983" on June 13-14, 1983.

S.66 is based largely on an agreement reached between the National League of Cities and the National Cable Television Association. However, many cities have raised serious concerns about the impact of S.66 on existing or potential cable television franchises.

U.S. Conference of Mayors' policy opposes federal legislation which limits the power of city governments in the cable television area.

Senator Frank Lautenberg of New Jersey, joined by Senator James Exon of Nebraska, Senator David Durenberger of Minnesota, Senator Rudy Boschwitz of Minnesota, and other senators plan to offer several amendments when S.66 comes to the floor on June 13. These amendments, explained in the attached "Dear Colleague" letter, would deal with the areas of 1) rate regulation; 2) franchise renewal; 3) common carrier regulation; 4) access, and 5) abrogation of third contractual duties.

While these amendments do not deal with the full scope of city concerns, their passage would represent an improvement over S.66 as it currently stands.

Mayors concerned over the potential impact of S.66 should contact their senators and urge co-sponsorship and support for the Lautenberg-Exon-Durenberger-Boschwitz amendments. The Conference of Mayors will be indicating support for the amendments to the Senate as improvements to the legislation, but will not be supporting S.66 on final passage, based on our existing policy. Cities may wish to follow a similar course in communication with Senate offices.

Please contact Len Simon, Assistant Executive Director, at 202/293-7330 with any questions or suggestions.

Attachment

BOB FACEWOOD DNYC CHAIRMAN
 BOB CENIZATEO DNYC
 JIMMYE HARRIS DNYC
 RUSSELL B. LONG LA
 DONALD W. RUDOLPH MAINE
 WENDELL H. FORD KY
 DONALD W. RUDOLPH MAINE
 J. JAMES EASTON NEON
 RUSSELL KEPLER ALA
 FRANK R. LAUBACH NC
 WILLIAM W. DUFFIN DNYC CHIEF COUNSEL
 RALPH B. EVERTS DNYC CHIEF COUNSEL

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
 AND TRANSPORTATION

WASHINGTON, D.C. 20510

May 26, 1983

Dear Colleague:

We are writing to seek your support of several amendments that we believe would address significant flaws in S. 66, the Cable Telecommunications Act of 1983. S. 66 is scheduled for floor action June 13 and 14.

The bill is intended by its sponsors to establish a national policy governing cable telecommunications. It would vest in the Federal Government primary jurisdiction over cable telecommunications, while restricting the power of State and local governments that previously have been actively involved in the franchising and regulation of cable systems. The bill is designed to relieve cable systems of many of their regulatory or contractual obligations. These include the kinds and diversity of service the systems must provide, the rates they may charge, the fees they may be required to pay to local governments, and the access they must provide to other users of the system. The bill would also establish a presumption that the holder of a cable franchise shall retain its franchise indefinitely.

We do not necessarily oppose a national policy on cable telecommunications. However, we believe the bill falls short in a number of ways. Therefore, when the bill reaches the floor, we intend to offer several amendments.

Rate Deregulation

In many areas of the country, cable is the only available means of securing clear television reception. The bill would deregulate rates in many of these far flung areas, subjecting consumers to the monopoly power of cable operators. We believe that rates -- if they are to be deregulated -- should be deregulated only in areas where there are available reasonably competitive alternatives to cable for reception of television signals. Consequently, we will propose an amendment that would substantially confine deregulation to those areas.

Moreover, even where rates may continue to be regulated under the bill, cable operators would be guaranteed annual rate increases equal to 5 percent or the increase in the regional consumer price index, whichever is greater. We believe that if there must be a guaranteed increase, it should be the lesser of the two measures. We will propose an amendment to accomplish that.

Franchise Renewal

In an effort to assure that cable franchisees will not be treated unfairly when it comes time to renew a franchise, the bill unduly insulates cable operators from healthy competition and fair regulatory review. The bill imposes a burden on the local franchising authority to show why a franchise should not be renewed. Under the bill, no state or local agency's decision would be given the usual respect accorded by reviewing courts. Instead, any administrative decision -- regardless of procedural fairness -- would be subjected to de novo judicial review that would be costly and dilatory. We believe cable systems can be assured of fair treatment without crippling reasonable regulatory oversight. We will propose an amendment that ensures that judicial review is de novo only where a fair and adequate hearing is not provided by local regulators.

Common Carrier

The bill would bar the States and the Federal Government from regulating a cable system as a common carrier or as a utility (except to the extent the cable system provides regular telephone service). The bill assumes that cable systems will never occupy a position -- like that of the local telephone utility today -- where it would offer essential services for which there are no reasonable, competitive alternatives. We are not so sure. Consequently, we plan to introduce an amendment to retain residual common carrier authority that could be exercised if circumstances warranted it.

Access

The large number of channels in modern cable systems provide the means to increase the diversity of information and viewpoints available to the public. We believe there is a national interest in increasing diversity that can be traced back to the First Amendment. However, the bill would leave it largely to the cable operators' discretion whether to offer access to public and educational groups, or to businesses and other organizations that would be prepared to lease channels at fair market value. We believe that a minimum fraction of channel capacity should be made available for access by other groups -- to ensure that the public enjoys the benefit of cable's resources. Moreover, franchising authorities should be empowered to require access by public and educational, as well as governmental users. We will propose amendments to accomplish this.

Abrogation of Contractual Duties

The bill would grant to cable operators the power to abrogate contractual duties to provide certain cable facilities or equipment if there has been a "significant change in circumstances." We concede that there should be some flexibility to revise the terms of a cable operator's franchise or contract if those obligations become burdensome. But there should be a strong presumption in

favor of the enforcement of freely accepted contractual obligations. The terms of any necessary contract revisions should, clearly, be a product of negotiation by the two parties. Consequently, we will support an appropriate amendment to restore the balance in favor of mutually agreed upon contractual duties.

We believe that these amendments would improve this effort to erect a national policy on cable telecommunications. We believe they would strike a more reasonable balance between the need to remove undue regulatory burdens, and the need to protect consumers when normal marketplace pressures are absent and to insure that they reap the potential benefits cable offers. Should you or your staff have any questions, please feel free to contact us or Mitchel Ostrer (Senator Lautenberg's Office) at 224-9713, Rich Fitzsimmons (Senator Exon's Office) at 224-4224 or Paul Hewitt (Senator Durenberger's Office) at 224-4718.

Sincerely,



J. JAMES EXON



FRANK R. LAUTENBERG



RUDY B. SCHWITZ



DAVID DURENBERGER, Chairman
Subcommittee on Intergovernmental
Relations

S.66 NETWORK FOR LOCAL CABLE AUTHORITY

Please add us to the informal "network" of California cities working together to protect local cable franchises and our rights to refranchise.

City _____

Contact Person _____

Title _____

Street _____ ZIP _____

Telephone _____

Our Congress Member(s) is _____

Return to:
Mayor Paul E. Zeltner
City of Lakewood, 5050 Clark Avenue, Lakewood CA 90712
(213) 866-9771

Mayor Richard S. Caliguiri
Pittsburgh
Mayor Lewis C. Murphy
Tucson

Federal Cable Television
Legislation and the Cities

- 1) WHEREAS, cable television is an important communications and information technology for the nation's cities; and
- 2) WHEREAS, provision of cable television service has already proven to be a valuable service to hundreds of communities across the country, and holds great potential promise to all cities in the United States; and
- 3) WHEREAS, the cable television industry is thriving and growing in the United States, with large return on investment and likelihood of even more considerable profit in the future; and
- 4) WHEREAS, local governments have had the responsibility for franchising cable television systems in their cities and for overseeing the implementation of those franchises once awarded; and
- 5) WHEREAS, the franchising process has been a model of the free marketplace at work, with enormous competition between cable companies for the privilege to provide exclusive service within a community; and
- 6) WHEREAS, cable television, because it will likely enjoy exclusivity within a community and will be the only telecommunications medium with a direct link to the homes of citizens with its facilities traversing the public's property; and
- 7) WHEREAS, the presence of a strong local government role in overseeing of franchise agreements has worked to ensure that contractual obligations are carried out and the public interest served; and
- 8) WHEREAS, the best approach to franchising, oversight of the franchise, and resolution of problems which may occur from time to time in carrying out franchise elements, has been the direct negotiation between local governments and cable companies, unfettered by the presence of third parties; and
- 9) WHEREAS, local governments, recognizing the need for and success of direct relationships between cities and cable companies, have sought to discourage unnecessary involvement in these matters by the Congress and the Courts; and
- 10) WHEREAS, cities, working together and with a broad coalition of concerned interests including representatives of labor, education, consumers, telecommunications, rural and utility interests, have helped to defeat in recent years broad attempts to remove local governments from their central role in the cable television process; and

- 11) WHEREAS, federal cable television legislation is again being considered by the Congress, with legislation pending before the full Senate and hearings having commenced at the Subcommittee level in the House of Representatives; and
- 12) WHEREAS, there is a possibility that a strong, bi-partisan effort will be made by the Congress to enact federal cable television legislation in the coming months; and
- 13) WHEREAS, the proposal currently pending before the full Senate is an improvement over the versions which preceded it, and
- 14) WHEREAS, members of the House and Senate who have worked closely with the nation's cities in a broad variety of areas, fully understanding the traditional and appropriate opposition of local governments to such legislation, will be looking to the nation's Mayors for leadership and direction in improving whatever proposals are forthcoming,
- 15) NOW, THEREFORE, BE IT RESOLVED that the U.S. Conference of Mayors reaffirms its view that federal cable television legislation restricting the traditional responsibilities which have been exercised by local governments in this area is not appropriate; and
- 16) BE IT FURTHER RESOLVED that if federal cable television legislation continues as a possibility, that the U.S. Conference of Mayors shall work to ensure that, to the extent possible:
 - federal cable legislation not limit the option of local governments to regulate the rates charged by cable television companies for basic service, should cities believe it in the public interest;
 - federal cable legislation not limit the option of local governments to define by negotiation with cable television companies the definition of basic service;
 - federal cable legislation provide maximum competition in the franchise renewal process with no presumption or expectancy of renewal on the part of the cable company holding the franchise;
 - federal cable legislation "grandfather" all existing franchises, and their terms and conditions and all franchise processes in which a Request for Proposal has been issued; and that federal legislation not apply to renegotiated franchise agreements, signed within six months of enactment;
 - federal cable legislation not provide cable companies with the power to abrogate contractual obligations based on a unilateral assertion of a significant change in circumstances;

- federal cable legislation not limit the ability of local governments to mandate public, educational, governmental, and leased access to cable television;
- federal cable legislation not limit the ability of local governments to negotiate the purchase price of a cable system if there is a material breach in the franchise agreement;
- federal cable legislation not define franchise fees to include taxes, fees, or other assessments, imposed by the franchising authority or other governmental authorities on cable system operators or cable subscribers; and

- 17) BE IT FURTHER RESOLVED by the U.S. Conference of Mayors that Congress is urged to closely examine the possibility of federal legislation in the areas of minimum technical standards, minimum privacy standards, minimum cross ownership provisions, minimum third party access standards, and minimum standards for interconnection; and
- 18) BE IT FURTHER RESOLVED that in working with Congress in the whole area of cable television legislation, the U.S. Conference of Mayors shall be guided by the principle of preserving existing municipal authority in the cable television field, which has greatly benefited the cable television industry, the cities, and the nation.

vantage with other providers of telecommunications services; and

"(4) eliminate government regulation in order to prevent the imposition of an unnecessary economic burden on cable systems in their provision of service to the public.

DEFINITIONS

"Sec. 603. for purposes of this title, the term—

"(1) 'basic service' means the lowest cost tier, other than a tier offered at a discounted fee, of service which is available to subscribers for a fee and which includes the provision of retransmission of local broadcast signals, public, educational, and governmental programming and any other programming service as offered by a cable operator as part of the tier, and specified in the franchise agreement as part of basic service, which is distributed by coaxial cable or any other closed transmission medium;

"(2) 'basic telephone service' means two-way voice grade communications that is held out to the public and that would be subject to regulation by the Commission or any State if offered by a common carrier subject, in whole or in part, to title II of this Act;

"(3) 'broadband telecommunications' means any receipt or transmission of electromagnetic signals, including basic service, cable service, and telecommunications service, over coaxial cable or any other closed transmission medium;

"(4) 'broadcasting' means telecommunications by radio intended to be received by the public, directly or by the intermediary of relay stations;

"(5) 'cable channel' or 'channel' means that portion of the electromagnetic frequency spectrum used in a cable system for the propagation of an electromagnetic signal;

"(6) 'cable operator' or 'cable system operator' means any person or persons, or an agent or employee thereof, that provides basic service, cable service, or telecommunications service over a cable system, or that directly or indirectly owns a significant interest in any cable system, or that otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;

"(7) 'cable service' means the provision by a channel programmer of one-way programming on a per channel, per program, or other basis which is distributed by coaxial cable or any other closed transmission medium, but such term shall not include basic service;

"(8) 'cable subscriber' means any person who receives or transmits electromagnetic signals distributed over a cable system;

"(9) 'cable system' means a facility or combination of facilities under the ownership or control of any person or persons, which consist of a primary control center used to receive and retransmit, or to originate broadband telecommunications service over one or more coaxial cables, or other closed transmission media, from the primary control center to a point of reception at the premises of a cable subscriber, but such term does not include: (A) a facility or combination of facilities that serves only to retransmit the television signals of television broadcast stations; (B) a facility or combination of facilities that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management; or (C) a common carrier subject to the provisions of title II of this Act whenever such carrier transmits broadband telecommunications services other than basic service or cable service;

"(10) 'channel programmer' or 'programmer' means any person having an agreement to provide basic service or cable service to a cable system operator, or any person who

leases, rents, or is otherwise authorized to use the facilities of a cable system for the provision of basic service or cable service, and such term shall include a cable system operator to the extent that such operator, or person or persons under common ownership or control with such operator, is engaged in the provision of such service;

"(11) 'closed transmission medium' or 'closed transmission media' means media having the capacity to transmit electromagnetic signals over a common transmission path such as coaxial cable, optical fiber, wire, waveguide, or other such signal conductor or device;

"(12) 'franchise' means a permit, license, ordinance, resolution, right-of-way, contract, certificate, agreement, or similar authorization issued by a franchising authority which authorizes the provision of basic service, cable service, or telecommunications service by a cable operator;

"(13) 'franchising authority' means any State, political subdivision, or agency thereof, or any other governmental entity empowered to grant a franchise;

"(14) 'grade B contour' means the field strength of a television broadcast station computed in accordance with regulations promulgated by the Commission;

"(15) 'information' means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or other symbols;

"(16) 'law' includes any regulation, rule, order, standard, policy, requirement, procedure, or restriction;

"(17) 'person' means an individual, partnership, association, joint stock company, trust, corporation or any governmental authority;

"(18) 'telecommunications' means the transmission of information by electromagnetic means, with or without benefit of any closed transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission;

"(19) 'telecommunications service' means the offering of telecommunications facilities, or of telecommunications, but such terms shall not include basic service or cable service; and

"(20) 'United States' means the several States and territories, the District of Columbia, and the possessions of the United States.

STATEMENT OF AUTHORITY

"Sec. 604. The provisions of this title shall apply as follows:

"(1) The Commission shall have jurisdiction to exercise authority with respect to broadband telecommunications in accordance with the provisions of this title and other applicable provisions of law.

"(2) Nothing in this title shall be construed as prohibiting any State or political subdivision or agency thereof, or franchising authority, from awarding, in accordance with the provisions of this title, one or more cable franchises within its jurisdiction.

"(3)(A) Except to the extent provided in paragraph (B), no cable system shall provide basic service or cable service without a cable franchise in compliance with this title.

"(B) The provision of paragraph (A) shall not be applicable in the case of any cable system in operation on April 21, 1983.

OWNERSHIP OR CONTROL OF CABLE SYSTEMS

"Sec. 605. (a) No State or political subdivision or agency thereof, or franchising authority, shall have the authority to prohibit, directly or indirectly, the ownership of cable systems by any person by reason of that person's ownership of any other media

So the bill (S. 66), as amended, was passed as follows:

S. 66

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Cable Telecommunications Act of 1983".

(b) The Communications Act of 1934 is amended by inserting immediately after title V the following new title:

"TITLE VI—CABLE TELECOMMUNICATIONS ACT

"FINDINGS

"Sec. 601. The Congress hereby finds that—

"(1) cable systems are engaged in interstate commerce through the origination, transmission, distribution, and dissemination of broadband telecommunications services;

"(2) the provision of broadband telecommunications is of concern to governmental entities;

"(3) a uniform national policy for broadband telecommunications can serve to eliminate and prevent conflicting and counterproductive regulations in order to allow unhampered growth and development of cable as a competitive medium which will be responsive to and serve the needs and interests of the public;

"(4) competition is a more efficient regulator; the government of the provision of diverse telecommunications services and as competition continues to develop, the deregulation of telecommunications services should occur; and

"(5) recognizing the long standing tradition of the Congress of promoting universal telephone service at reasonable rates, and recognizing the rapid technological changes of the types and delivery of services offered by the telecommunications industry, it is in the public interest to ensure that all providers of telecommunication services share in the obligation of providing universal service.

"PURPOSES

"Sec. 602. The purposes of this title are to—

"(1) establish a national policy concerning broadband telecommunications and to encourage a competitive environment for the growth and development of broadband telecommunications;

"(2) establish guidelines for the exercise of Federal, State, and local regulatory authority;

"(3) allow cable systems to be responsive to the needs and interests of the public on an equal basis without a competitive disad-

or other interests, including broadcast, cable, newspaper, programing service, or other printed or electronic information service.

"(b)(1) Notwithstanding the provisions of subsection (a) of this section, for the purpose of ensuring fair and equitable treatment of United States cable enterprises seeking access to markets in a foreign country, the Commission shall have authority to conduct inquiries applicable to foreign persons from that country seeking access to domestic markets in the United States in connection with the construction, ownership and operation of cable enterprises as to whether such United States cable enterprises are permitted fair and equitable access to such foreign markets.

"(2) The Commission shall submit any information obtained through such inquiries to the United States Trade Representative to assist the Trade Representative in his identification and analysis of acts, policies or practices which constitute significant barriers to, or distortions of, United States exports of services.

"(3) For purposes of this subsection, the term 'foreign persons' includes any individual who is not a citizen of the United States, any subsidiary (although established under the laws of the United States or any State thereof) of a corporation or other business entity which was established under the laws of a foreign country, any corporation or other business entity established under the laws of a foreign country, or any corporation or other business entity established under the laws of the United States or any State thereof, if 25 percent or more of the capital stock or equivalent ownership is owned or controlled by an individual who is not a citizen of the United States or by a corporation or other business entity established under the laws of a foreign country, or any subsidiary of a corporation or other business entity established under the laws of a foreign country.

"(c)(1) Notwithstanding the provisions of subsection (a) of this section, a State or political subdivision or agency thereof, or franchising authority, may not acquire an ownership interest in any cable system pursuant to a buy-back provisions of a franchise or require a sale of a cable system to any other person pursuant to a franchise, upon the expiration of the franchise, unless such State, subdivision, agency, authority, or person acquires such ownership or interest at not less than fair market value based upon the on-going operations of the system. In the event that the cable operator and a State or political subdivision or agency thereof, or franchising authority, are unable to agree upon any such fair market value, then the matter of determining fair market value shall be submitted to binding arbitration. For purposes of arbitration, each of the affected parties shall select one arbitrator and the two arbitrators so selected shall choose a third arbitrator.

"(2) Notwithstanding the provisions of paragraph (1) of this subsection, in the event of termination for cause of a franchise due to a material breach, a State or political subdivision or agency thereof, or franchising authority, may acquire an ownership interest in such cable system but only upon written notice of the breach, reasonable opportunity to remedy the breach, and other due process. Any such termination shall be subject to de novo review by a court of competent jurisdiction.

"(d) In any case in which any such State, subdivision, agency, or authority has or acquires any such ownership or interest, such State, subdivision, agency, or authority shall, in no case, own or control, directly or indirectly, the content of any of the pro-

graming on such cable system, except for programming on government access channels, unless such State or political subdivision or agency thereof, or franchising authority, establishes an independent board or a separate management company. Such board or company shall not include any State or local office holder.

"ACCESS CHANNELS

"Sec. 606. (a) A cable system operator may be required, as part of the franchise request for proposals, to dedicate or set aside channels for public, educational or governmental users, and the cable system operator may offer in a franchise to dedicate or set aside channels for other channel users.

"(b) The franchising authority and the cable operator may establish rules and procedures for the use of the channels set aside or dedicated pursuant to this section.

"(c) Until such time as there is demand for each channel full time for its designated use, public, educational, governmental, or other channel programing may be combined by the cable system operator on one or more channels, and to the extent time is available on such channels, they may be used by the cable system operator for the provision of other services.

REGULATION OF RATES AND SERVICES

"Sec. 607. (a) Nothing in this title shall be construed as prohibiting any State or political subdivision or agency thereof, or franchising authority, from establishing, fixing, or otherwise restricting the rates charged by cable operators—

"(1) to subscribers for the receipt of basic service,

"(2) to subscribers for equipment necessary for the receipt of basic service, and

"(3) to subscribers for equipment which facilitates the reception of basic service by hearing impaired individuals.

"(b)(1) Any rate regulated pursuant to this section may be increased annually at the discretion of the cable operator by an amount not to exceed the regional consumer price index for the preceding 12 months, upon 30 days prior notice. The ability to affect such increases shall be cumulative for not more than 3 successive years.

"(2) Notwithstanding the provisions of paragraph (1) of this subsection, nothing in this title shall be construed as prohibiting any State or political subdivision or agency thereof, or franchising authority, from providing that such automatic increases shall not apply to a franchise which is in existence on the date of the enactment of the Cable Telecommunications Act of 1983 and which provides for a fixed rate for basic service over a specified period.

"(c) Notwithstanding the provisions of subsections (a) and (b) of this section, a cable system operator may automatically increase basic service rates which exceed the basic rates allowed pursuant to subsection (a) or (b) of this section if—

"(1) such operator has requested the increase in rates; and

"(2) the request is not acted on within 90 days following the date of its receipt.

"(d)(1) Notwithstanding the provisions of subsection (a) of this section, the authority to establish, fix, or otherwise restrict the rates charged to subscribers for the provision of basic services set forth in subsection (a) of this section, except to the extent otherwise provided in paragraph (2) of this subsection, shall not be applicable in any case where the cable system is located within the grade B contour of not less than four television signals of which there shall be one affiliate of each of the three major television networks.

"(2) The provisions of paragraph (1) of this subsection shall not be applicable in the

case of any franchise in existence prior to the date of the enactment of the Cable Telecommunications Act of 1983, if the rates charged to subscribers for the provision of basic services are subject to regulation or are restricted by any State or political subdivision or agency thereof, or any franchising authority. The provisions of this paragraph relating to existing rate regulation of basic service shall be applicable for a period of 5 years following the date of the enactment of such Act, or for a period equal to one-half of the period of the remaining term of such franchise, as of the date of the enactment of such Act, whichever is greater. The provisions of paragraph (1) shall be applicable to any renewal or other extension of any such franchise.

"(3) The provisions of paragraph (1) of this subsection shall not be applicable where the cable system is subscribed to by at least 80 percent of the residences to which cable service is available, unless the cable operator demonstrates that 90 percent of the time, adequate on-site reception of the four television signals is available to more than 50 percent of the households to which cable service is available. Such a determination shall be made by the Commission. Failure by the Commission to make a determination within 180 days after the filing of an application by the cable operator shall be deemed to be a determination that such satisfactory reception is available.

"(e) No executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, or franchising authority, shall have authority to regulate or restrict the rates for reconnection, additional sets to the same subscriber, or sales of equipment.

"(f) No executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, or franchising authority, shall have authority to regulate or restrict the provision of or nature of cable services offered over a cable system except as provided in section 613 of this Act.

"(g)(1) No executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, or franchising authority, shall have authority to regulate or restrict the provision of or nature of telecommunications services offered over a cable system, except with respect to the provision of basic telephone service, intrastate telecommunications services, and except as provided in section 613 of this Act.

"(2)(A) Subject to the provisions of subparagraph (B), a State may require only the filing of informational tariffs for intrastate telecommunications services that would be subject to regulation by the Commission or any State if offered by a common carrier subject, in whole or in part, to title II of this Act, which are offered over a cable system. Such informational tariffs shall specify only the rates, terms, and conditions for the provision of service and shall take effect on the date specified therein.

"(B) Subparagraph (A) shall not apply to any private telecommunications service which is a discrete service dedicated to a single customer and operated by such customer.

"(3) A State shall deregulate the provision of intrastate telecommunications services if it finds that such services are subject to effective competition.

"(4) For purposes of this subsection, an intrastate telecommunications service shall be considered to be subject to effective competition in a particular geographic area or market if there are reasonably available alternatives. In determining whether there

are reasonably available alternatives, the State shall consider—

"(A) the number and size of providers of services;

"(B) the extent to which services are available from providers in the relevant geographic area or market;

"(C) the ability of such providers to make services readily available at comparable rates, terms, and conditions; and

"(D) other indicators of the extent of competition, including affiliation of providers of services.

"(5) Nothing in paragraphs (2), (3), and (4) of this subsection shall be construed as being applicable to basic telephone service.

"(h) Nothing in this Act shall be construed as prohibiting a franchising authority and a cable operator from specifying, in a franchise agreement or renewal thereof, that certain cable services shall not be provided or shall be provided subject to conditions. If such cable services are obscene or are otherwise unprotected by the United States Constitution.

"(i) The provisions of subsections (b), (c), and (d) shall not apply to a franchise agreement in existence on the date of enactment of this Act for a period of 5 years following the date of enactment of this Act, or for the remaining term of such franchise agreement, whichever is greater, in any State which has in effect, and has had in effect since January 1, 1983, a statutory scheme deregulating rates which contains a requirement regarding minimal channel capacity.

FRANCHISE FEES

"Sec. 608. (a) Cable operators may be required in a franchise to pay to a State or political subdivision or agency thereof, or franchising authority, a franchise fee.

"(b)(1) No franchise fee paid by a cable system operator for the privilege of holding a franchise, shall exceed an annual aggregate of 5 percent of such cable operator's gross revenues derived from the operation of the cable system which is the subject of the franchise.

"(2) Nothing in this section shall be construed as limiting fees required by a franchise in effect on the date of enactment of the Cable Telecommunications Act of 1983 to be paid directly or indirectly to entities established for the purpose of facilitating the use of channels set aside for public, educational, or governmental use.

"(c) Any cable system operator may pass the cost of any increase in a franchise fee through to subscribers, and may designate the total franchise fee as a separate item on the subscribers' bills.

"(d) For the purpose of this section—

"(1) franchise fee shall include any tax, fee or assessment of any kind imposed by a franchising authority or governmental authority on a cable system operator or cable subscriber because of their status as such; and

"(2) 'assessment' shall not include bonds, security funds, letters of credit, insurance, indemnification, penalties, liquidated damages or similar requirements which are incidental to the enforcement of the franchising agreement.

"(e) Nothing in this section shall be deemed to require a cable operator to renegotiate the provisions of an existing franchise.

"RENEWALS AND EXTENSIONS

"Sec. 609. (a) In any case in which a cable system operator submits an application to the franchising authority for the renewal or other extension of such operator's franchise authorization, the franchising authority shall grant such renewal or other extension unless it finds that—

"(1) the cable system operator has not substantially complied with the material

terms of such franchise and with applicable law, or has been convicted of a felony;

"(2) there has been a material change in the legal, technical, or financial qualifications of the cable system operator that would substantially impair the continued provision of service by such operator;

"(3) the facilities to be provided by such operator, including facilities for governmental access, are unreasonable in light of the community need for and cost of such facilities;

"(4) the signal delivered by the cable system within the control of the cable system operator, has not generally met technical standards as established by the Commission; or

"(5) the proposals contained in the renewal application are otherwise unreasonable.

"(b) A cable system operator must file for renewal at least 24 months, but not more than 36 months, before expiration of the franchise. The franchising authority must consider the renewal within 120 days of submission of the application and conduct any proceedings necessary to adequately consider the application.

"(c) A cable system operator with a franchise which shall expire within 24 months after the date of enactment of the Cable Telecommunications Act of 1983, shall be in compliance with subsection (b) if he files an application for renewal within 60 days after such date of enactment.

"(d) The franchising authority shall—

"(1) negotiate in good faith with any cable system operator regarding franchise renewal within 30 days after the completion of proceedings pursuant to subsection (b); and

"(2) make a final decision on granting or denying renewal within 12 months after receipt of an application;

"(3) in the case of denial of an application—

"(A) not make the final decision for at least 7 months from the date of receipt of the application; and

"(B) notify the applicant by written statement, within 7 days after the final decision, of the reasons for the denial.

"(e) Any renewal applicant adversely affected or aggrieved by a final decision of a franchising authority made pursuant to subsection (d), or by a failure of the franchising authority to act in accordance with subsection (d), may obtain judicial review of such final decision in any court of competent jurisdiction. The existing franchise shall remain in effect pending the completion of such judicial review. Such judicial review shall be de novo, unless the renewal applicant has been afforded a hearing on record before an independent hearing examiner or administrative law judge consistent with State law that requires—

"(1) adequate notice;

"(2) fair opportunity for participation of the renewal applicant, which includes—

"(A) discovery;

"(B) the filing of pleadings, motions, or objections;

"(C) the introduction of written or oral testimony; and

"(D) cross-examination of opposing parties; and

"(3) a written decision by the examiner or judge based exclusively on the full record of the hearings and stating the specific findings of fact and conclusions of law on which the decision is based.

"UNAUTHORIZED INTERCEPTION OR RECEPTION

"Sec. 610. (a) No person or government authority shall intercept or receive broadband telecommunications unless specifically authorized to do so by a cable system operator, channel programmer, or originator of broadband telecommunications or as may

otherwise be specifically authorized by Federal law.

"(b) In order to safeguard the right to privacy and security of broadband telecommunications, such broadband telecommunications shall be deemed to be a 'wire communication' within the meaning of section 2510(1) of title 18 of the United States Code.

"(c) In the event that there may be any difference between the provisions of this section and chapter 119 of title 18 of the United States Code, or any regulations promulgated thereunder, it is the intent of the Congress that such chapter 119 shall be controlling.

PROTECTION OF SUBSCRIBER PRIVACY

"Sec. 611. (a)(1) Except as provided in paragraph (2) of this subsection, no cable operator, channel programmer, or originator of broadband telecommunications may use the cable system to collect personally identifiable information with respect to a cable subscriber, except upon the prior written or electronic consent of that subscriber.

"(2) The provisions of paragraph (1) of this subsection shall not apply to the collection of information solely for billing purposes or to monitor whether there is unauthorized reception of cable telecommunications.

"(3) A cable operator, channel programmer, or originator of broadband telecommunications shall ensure that any such information is destroyed when the information is no longer used or to be used for the purposes for which it was collected.

"(b) No cable operator, channel programmer, or originator of broadband telecommunications shall disclose personally identifiable information obtained pursuant to subsection (a) of this section with respect to a cable subscriber, or personally identifiable information with respect to the services provided to or received by a particular cable subscriber by way of a cable system, except upon the prior written or electronic consent of the subscriber, or pursuant to a lawful court order authorizing such disclosure.

"(c) If a court shall authorize or order disclosure, the cable subscriber shall be notified of such order by the person to whom such order may be directed, within a reasonable period of time before the disclosure is made, but in no event less than 14 calendar days.

"(d) Each cable operator shall provide of entering into an agreement to provide cable telecommunications, and regularly thereafter, inform every subscriber of the rights of the subscriber under this section. Such information shall include a description of the nature of the information to be maintained by the cable operator, channel programmer, or originator of broadband telecommunications, and the location and availability of such information.

"(e) A cable subscriber shall have access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator, channel programmer, or originator of broadband telecommunications. Such information shall be available to the subscriber at reasonable times and at a place designated by the cable operator, channel programmer, or originator of broadband telecommunications.

"(f) Any cable subscriber whose privacy is violated in contravention of this section, shall be entitled to recover civil damages as authorized and in the manner set forth in section 2520 of title 18 of the United States Code. This remedy shall be in addition to any other remedy available to such subscriber.

CRIMINAL AND CIVIL LIABILITY

"Sec. 612. Nothing in this title shall be deemed to affect the criminal or civil liability of channel programmers or cable operators pursuant to the law of libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws, except that cable operators shall not incur such liability for any program carried on any public, educational, governmental, or other channel referred to in subsection (a) of section 608, or for any program required by law to be carried on any other channel.

PROGRAMMING, SERVICES, AND FACILITIES

"Sec. 612. (a) No State or political subdivision or agency thereof, or franchising authority, may require the provision of particular programming or other broadband services, or facilities, equipment, services, or other items of value which are not related to the provision of broadband telecommunications service.

"(b) A franchising authority may require, as part of the franchise request for proposals—

"(1) channel capacity for public, educational or governmental access purposes; and

"(2) the construction of cable system facilities or provision of other cable-related equipment.

"(c) A cable operator may offer, but may not be required to provide, as part of basic service or any other tier of service—

"(1) channel capacity for other access uses; and

"(2) particular services.

"(d) The cable operator may replace or remove a particular service specified in the cable franchise as part of the basic service or any other tier of cable service or telecommunications service in any case in which there has been a significant change in circumstances since the cable operator's offer to provide such service. The cable operator may not be required to retain a specified service in any particular category of service other than basic service.

"(2) In any case in which a cable operator submits a showing that, as a result of a significant change in circumstances, particular facilities and equipment required by the franchise are economically, technically, or otherwise impracticable, the franchising authority shall enter into negotiations with the cable operator for the termination, modification, or deferral of such requirement. If such terms and conditions cannot be agreed upon within 45 days, the matter shall be submitted to binding arbitration. For purposes of arbitration, each of the affected parties shall select 1 arbitrator and the 2 arbitrators so selected shall choose a third arbitrator. The existing franchise provisions, except for those which are the subject of arbitration, shall not be affected by the arbitrators' final decision.

"(e) Except as provided in subsection (c) of this section, a franchising authority may, in accordance with the provisions of this section, enforce any offer to provide particular basic service set forth in subsection (c) or particular cable services or telecommunications services or cable system facilities or cable-related equipment offered by a cable operator provided that the provision of such services, facilities, or equipment is specifically required by the franchising agreement.

"(f) Notwithstanding the preceding provisions of this section, in any case in which a franchise agreement in effect on the date of the enactment of the Cable Telecommunications Act of 1983 requires the cable operator to provide particular programming, services, facilities, cable related equipment, or channel capability for access uses, such requirements, subject to subsections (d) and (e), shall remain in effect for the term of the

franchise and in accordance with the provisions thereof. For purposes of this subsection, a franchise agreement containing such requirements shall be considered to have been in effect on such date of enactment if such agreement was the result of a franchise proceeding for which a request for proposals was originally issued, however subsequently modified or replaced, on or prior to September 30, 1982.

TWO REGULATION AS COMMON CARRIER

"Sec. 614. No executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, or franchising authority, shall have authority to impose on a cable system regulation as a common carrier or a utility to the extent that such cable system provides broadband telecommunications service other than basic telephone service."

EXCLUSIVE JURISDICTION

"Sec. 2. (a) Except to the extent otherwise specifically provided in title VI of the Communications Act of 1934, as added by the first section of this Act and as provided in section 607 of such title, the Federal Government shall have exclusive jurisdiction over broadband telecommunications regarding matters covered by such title.

"(b) Any law of any State or political subdivision or agency thereof, or franchising authority, in effect on the effective date of title VI of the Communications Act of 1934, as added by the first section of this Act, which is in conflict with the provision of subsection (a) of this section relating to the exclusive jurisdiction of the Federal Government, shall be deemed superseded, as of the expiration of the 6-month period following the date of the enactment of this Act, and shall thereafter be null and void and of no effect.

"(c) Except to the extent otherwise provided by this Act and the amendments made thereby, any State or political subdivision or agency thereof, or franchising authority, may exercise jurisdiction over matters which are of strictly local concern and which are necessary for reasons of public health, safety, and welfare, including the terms and conditions for the granting of a franchise, the construction and operation of a cable system, and the enforcement and administration of a franchise.

NEW AND ADDITIONAL SERVICES

"Sec. 3. Title I of the Communications Act of 1934 is amended by inserting after section 8 the following new sections:

NEW AND ADDITIONAL SERVICES

"Sec. 7. (a) Consistent with sound spectrum management, the Commission shall, to the maximum feasible extent, encourage the introduction of new and additional services by new applicants, existing licensees, or other persons. In any proceeding in which new or additional services are proposed, such services shall be presumed to be in the public interest whenever the Commission finds that such services are technically feasible without causing significant technical degradation to or interference with radio transmissions by other licensees.

"(b) Any person may file with the Commission a petition to establish or an application to offer a new or additional service.

"(c) The Commission must determine whether the new or additional service proposed in a petition or application is in the public interest within 1 year after such petition or application is filed. If the Commission initiates its own proceeding for a new or additional service, such proceeding must be completed within 12 months after it is initiated.

DECLARATION

"Sec. 8. The Congress declares that competition is a more efficient result, or than government of the provision of diverse communications services and as competition continues to develop, the deregulation of communications services should occur."

EFFECTIVE DATE

Sec. 4. The provisions of this Act and the amendments made thereby shall take effect upon the date of enactment of this Act.

REDESIGNATION

Sec. 5. The existing title VI of the Communications Act of 1934 is redesignated as title VII, and sections 601 through 609 are redesignated as sections 701 through 709, respectively.



UNITED STATES CONFERENCE OF MAYORS

1620 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
TELEPHONE: (202) 293-7330

STATEMENT OF

THE HONORABLE BOB BOLEN
MAYOR, CITY OF FORT WORTH

on behalf of

THE UNITED STATES CONFERENCE OF MAYORS

on

CABLE TELEVISION AND THE CITIES

before the

SUBCOMMITTEE ON TELECOMMUNICATIONS, CONSUMER
PROTECTION AND FINANCE

COMMITTEE ON ENERGY AND COMMERCE

UNITED STATES HOUSE OF REPRESENTATIVES

May 25, 1983

Mr. Chairman and members of the Subcommittee, I am Bob Bolen, Mayor of the City of Fort Worth, Texas. I am here this morning on behalf of my city and the U.S. Conference of Mayors, which represents the Mayors of the nation's principal cities.

The Conference appreciates the opportunity to present our views to the Subcommittee this morning. Our policy on cable television is attached to the back of this statement, and underscores the very strong belief of most Mayors that an overriding need for such legislation has yet to be demonstrated. Without federal legislation, municipal corporations and private firms have negotiated freely in an open market for the delivery of cable television services. The cable television franchise is an example of a system working well. Where bid requirements are excessive, or deemed too costly, cable television companies are free to decline participation, thereby informing the city that they do not view the city's cable market as profitable under the city's conditions. Nor are cable operators forced to sign a contract that is unacceptable to them. The terms of a cable franchise agreement can be negotiated openly, and if provisions are proposed that are unacceptable to either party, no contract is signed; both parties must accept the contractual document when it is signed by the respective sides. Signing the agreement implies acceptance of its provisions.

All institutional arrangements can stand improvement. But by and large, we believe that the cable company/local government relationship has worked well -- the rapid wiring of urban America is good evidence of this fact. And, where problems do from time to time emerge, we

believe that the tool of negotiation has, can, and will be used to solve those problems.

Mr. Chairman, if it is nevertheless the intention of this Subcommittee to achieve federal legislation in this area, we strongly hope that the Subcommittee will commit to the nation's Mayors now that it will begin the process with an open mind and a clean slate. We, in turn, will pledge to work earnestly with the Subcommittee and its staff to achieve a legislative product that is consistent with the public interest. And, Mr. Chairman, I want it to be stated very clearly and for the record, that the federal government does not have a monopoly on concern for the public interest in cable television. In the franchising process, and in the oversight of the implementation of franchises, city governments search and work for, not the narrow concerns of what might be best for city governments, but for the best public interest. The public interest has been our goal and always will be.

Mr. Chairman, it is well known that S.66, "The Cable Telecommunications Act of 1983," as recently reported by the Senate Committee on Commerce, Science and Transportation, although an attempt to achieve agreement where conflict has existed, causes problems for many cities -- those with franchises existing, and those which hope to have franchises soon.

While efforts to achieve a compromise are to be commended, it must be understood that the negotiations which brought about S.66 were commenced by the Senate's clear threat of "a worse bill." It is our hope that the House, if it should decide to go forward, would concentrate on

good legislation which makes sense to cities, is fair to cable, and will dispense with threats and coercion.

Mr. Chairman, our key concerns with S.66 could be detailed in the following manner.

Definition of Basic Service and Rate Regulation

S.66 defines basic service as the lowest-cost tier (non-discounted) of service which includes the must-carries and the access channels. It is only this portion of basic cable service to which any local rate regulation can be applied. In this definition of basic service, "competitive" market is declared, and the cable rate structure is deregulated completely. Then, what little rate regulation remains (after applying the "four over-the-air channel criterion") is to be erased after several years. In addition, operators are permitted automatic CPI-based rate increases each year, making cable the only locally franchised consumer service that is guaranteed rate increase every year. This definition of basic service is deficient on a number of grounds. First, basic service must be defined, at an absolute minimum, as all non-premium (i.e., non-pay) channels available to the consumer. A further valuable step would entail an explicit definition of basic service in a manner that specifies the channel/service components of "basic service." In this mode, basic service would be defined as: 1) must-carry over-the-air stations; 2) any low-power TV stations licensed in the area, 3) all access channels; 4) any local origination channels (i.e., operator-programmed channels); and 5) all other non-premium cable channels.

The Federal Communications Commission's pre-emption of local authority to regulate pay-service rates makes it imperative that local

governments retain the ability to regulate non-pay service rates. As it now stands, cable operators are free to escalate pay-service prices without limit (notwithstanding the "market"), to the point that in many cable systems, CATV operators receive from subscribers double and triple the price the operator pays to the pay-service providers. In this free "market," the subscriber doesn't really have the choice of movie or arts or sports channels -- instead, the choice is to subscribe or not subscribe to the only such services available. Conversely, basic (non-pay) services are received by a cable operator free of charge, or for a few pennies per subscriber; in the vast majority of instances, the basic cable rate clearly covers the operator's costs of payment to the basic service supplier. Eliminating local government's authority to regulate these basic rates only increases the cable operator's ability to extract monopoly profits and surplus revenue from cable subscribers.

Mr. Chairman, rate regulation is important to be retained from our perspective, as a basic tool to protect the public interest by insuring that the terms of the franchise agreement are being properly implemented by the cable company. Most rate increases are fairly routinely approved -- following assessment by the city that all else is well -- a practice followed with respect to virtually every other franchise. We believe it extremely important to retain the right to regulate rates for non-pay services.

Franchise Renewal

Mr. Chairman, Mayors also have a very deep sense of concern regarding the franchise renewal sections of S.66. We strongly believe that

although S.66 contains some caveats and attempts at balance, it nevertheless contains a presumption for renewal of the existing franchise that in many cases would be difficult to rebut, and would undoubtedly place the burden of proof on the city government. Franchise agreements are long -- usually some 15 years -- ample time for a cable company to make and recoup its full investment with considerable profit. Cities should have the option at that point, particularly given the promised advances in franchise sophistication and technology, to start fresh without proving insufficiency on the part of the existing franchisee, and leaving itself open to potential court challenges. If an existing franchisee is up to the competition, then the marketplace will prevail in its favor.

Enforcement of Existing Franchise Agreements and Contracts

Another troublesome aspect of S.66 to Mayors concerns what S.66 refers to as " ... significant change(s) in circumstances." What this term refers to is the cable operator's ability patently to renege on earlier contractual commitments agreed to during the franchising process and subsequent franchise agreement. At face value, such a requirement seems relatively innocent, especially when explained in terms of examples like The Entertainment Channel, CBS Cable, or the changing fee structure of the Copyright Royalty Tribunal.

This "changed circumstances" provision is a potential Pandora's box for cities. If the cable company truly believes that circumstances have changed significantly enough to warrant a change of service, then that should be the subject of negotiations between the franchising authority and the company, and not a unilateral decision on the part of the company.

This type of one-sided action could pose a real and grave threat to the integrity of the franchising process. No simple waiver of contractual commitments should be permitted.

Retroactivity

Mr. Chairman, any cable legislation undertaken by this Subcommittee should "grandfather" existing franchises, their terms and conditions, and franchise processes in which an RFP has been issued or franchise applications have been accepted. Franchises were freely entered into by both parties. Possible accommodations in the future could be made. But any attempt on the part of federal legislation to make "null and void" any aspect of franchises is clearly wrong and not in the public interest.

Third Party Access

Federal legislation should also not curtail the ability of cities and cable companies to negotiate levels for third party, public, governmental, and leased access channels. This is the very heart of designing and implementing a franchise which fits the public interest and ensures that cable will reach its potential to serve our communities. While federal floors may be appropriately considered, certainly federal ceilings would be inappropriate.

Conclusion

Mr. Chairman, on behalf of the U.S. Conference of Mayors, I wish to express appreciation for having the opportunity to present our views this morning. We believe that the case has not been made for cable legislation, although we fully understand the tumultuous factors which have induced it in the Senate. We urge that if you decide to proceed,

that it be with caution, in an open atmosphere, and with due consideration to all of the elected officials whose primary concern is the public interest.

I would be pleased to take any questions the Subcommittee might have.