# RETRANSMISSION CONSENT/MUST CARRY, RATE REGULATION AND THE 1992 CABLE ACT CLARKSVILLE CABLE AFTER REGULATION

JAMES RAY TRODGLEN

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Retransmission Consent/Must Carry, Rate Regulation

And The 1992 Cable Act

Clarksville Cable After Regulation

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A Thesis

Presented to the

Graduate and Research Council Of

Austin Peay State University

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In Partial Fulfillment

of the Requirements for the Degree

Master Of Arts

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by James Ray Trodglen

May 1997

# DEDICATION

This thesis is dedicated to the great medium of communications, and the continuing growth of both broadcast television and cable. I would also like to dedicate this thesis to everyone that has helped shape my professional and academic career including Bob Belvin, Chris Ginn, Dr. David von Palko, Dr. Ellen Kanervo, Dr. Paul Shaffer, and my wife Becky. There were times that the completion of this academic work did not seem possible, but after a lot of patience and determination on my behalf not to let a goal go unfinished, it is completed. It is my desire this academic work will be studied and will serve a purpose for anyone wanting to understand the complexity of the sometimes complicated world of broadcast and cable television.

## ACKNOWLEDGMENT

After two years of research and writing, I would like to thank the following members of my thesis committee: Dr. David von Palko, Dr. Paul Shaffer, and Dr. Ellen Kanervo. Each of these professors has shaped my academic and professional career. I want to give a special thanks to Dr. von Palko, my mentor for the past 12 years. I would also like to thank Chris Ginn and Bob Belvin of Charter Communications's Clarksville cable system. Both were instrumental in allowing me to see the inside decision making process as the 1992 Cable Act was being implemented. My wife Becky would not allow me to give up when I did not think I was going to complete this academic work, and I thank her for hours of encouragement. She also kept me on the right path whenever I would deviate from my academic work. I would also like to thank Austin Peay State University for allowing me to obtain a dream that might not have been achievable elsewhere. And my cat Patches, who would stand in front of the computer monitor at home yearning for my attention. I promise not to ignore you anymore.

## ABSTRACT

Cable television is now a part of our lives. As a public we depend on cable television as a source of news, information, and entertainment. The 1992 Cable Act was designed to protect the consumer. In the end it not only helped the consumer, but it helped broadcast channels and cable channels. The 1992 Cable Act has led to further regulation, and has allowed the telephone industry to become involved in cable television. This academic work takes a look at the 1992 Cable Act, specifically retransmission consent/must carry and rate regulation. The focus of this study will highlight cable television in Clarksville, Tennessee, and the steps Charter Communications in Clarksville took in implementing the 1992 Cable Act. This study will evaulate if the 1992 Cable Act hurt Clarksville cable, or if Clarksville cable benefitted along with the consumer. This paper will show the final outcome of one of the most regulated bills ever to impact the cable industry.

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# Chapter I

## INTRODUCTION

Broadcast television's biggest threat has come from the cable industry - the largest and fastest growing electronic medium.

Cable Television (CATV) can answer an audience's demand for additional viewing options and, at the same time, provide dependable and technical quality. The cable industry's history can be traced back to the 1940s when CATV systems in rural areas of both Oregon and Pennsylvania sold receivers. In the 1950s, cable systems came under the regulation of municipal governments which granted cable operators access to utility poles to string cable or bury cables along public right-of-ways. Early cable system carried only five or six broadcast stations. During this period fewer than 1% of all homes with televisions had access to cable (Head, Sterling, Schofield, 1996).

As the cable industry grew, so did its economic impact, which caught the attention of broadcast stations. In 1962, the Federal Communications Commission, the governing body of electronic communications, began to implement rules regulating the cable industry. The first heavy regulation came ten years later with the Federal Communication Commission's Definitive Cable Regulations. In 1977, however, an appeals court overturned much of the Definitive

Cable Regulations sending cable back into a period of freedom from government restriction (Head, Sterling, Schofield, 1996).

The cable industry began to flex its muscles in the late 1970s and, by 1995, there were over 11,000 cable systems throughout the United States. Much of this growth came during a period when the cable industry was free of scrutiny from the government (Head, Sterling, Schofield, 1996).

However, many changes were made when the United States Congress passed the 1992 Cable Act, also known as the 1992 Cable Television Consumer Protection and Competition Act. The original bill was introduced in 1990 with full compliance to be made by the end of 1995. The FCC took the first step toward implementation of the Cable Act in November of 1992. Central in this move was the question of how to manage the new rules under the Cable Act's provision.

Much of the Cable Act's wording and meaning has been debated among members of Congress and cable industry leaders. The on-going debate has led to the possibility of new legislation being introduced. For the purpose of this study, the effects of the 1992 Cable Act will be the sole focus.

The cable industry came under what can be labeled major reconstruction. Many small and independent cable systems have had concerns with the guidelines, and whether the guidelines would end their current operation status. As a result, many small cable systems have since been purchased or merged with large MSOs (Multiple System Operators). These mergers and buyouts have strengthened the Multiple System Operators who have the appropriations to buy additional systems and upgrade with new technology which includes fiber optics, as specified in the Cable Act.

One central theme of the 1992 Cable Act is the safeguard of consumers against the cable industry, which previously could increase rates without prior approval. The FCC also initiated home-wiring rules and regulations governing the airing of indecent programming on leased and public access channels.

In December of 1992, the Federal Communications Commission launched a number of proceedings for implementing the Cable Act such as rate regulation and program access. This included a method for establishing cable rates. A hearing was held in March of 1993, to review the Cable Act's <u>must-carry</u> provision rule. The <u>must-carry</u> rule requires cable systems with 12 or fewer channels to provide at least three local signals, while systems with more than 12 channels must reserve up to a third of capacity for local broadcasters.

The Cable Act has been subject to different interpretations, and there was uncertainty regarding how the Federal Communications Commission would review cable systems of different sizes. Small systems owners were concerned they would be subjected to the same level of government compliance as the Multiple System Operators.

The small and medium sized cable systems also have many financial concerns, such as; the cost to upgrade and interface new technology; the ability to survive new competition, and the cost of the new regulation.

The new competition not only comes from other cable companies, but from: 1. the telephone industry that has access to nearly every home in the country, and has taken a more active rȯle in the cable industry; 2. costly technological changes that are expected to make an impact in urban markets first, before impacting small-system markets and 3. profitability in the new regulatory environment, which will be tougher to achieve because of cash flow loss.

The principles behind the Cable Act include effective competition in a monopolistic industry. The Cable Act described effective competition as a rival multichannel provider reaching at least 50% of the households and 15% of the subscribers. One important item to come from the Act is a base, or benchmark rate level, used to reregulate rates, and whether rates should be based on a per channel base.

New rules have also been applied toward ownership, and the Federal Communications Commission must now decide whether it is fair to charge Direct Broadcast Satellite or wireless more than cable systems are charged for programming. The Federal Communications Commission has examined the limitations on operators and how much of a programming service they can own. Other proposals from the Cable Act included equal employment rules, user fee, customer service, and tier buy-through.

To track the current direction of the cable industry, it is important to study the government's involvement in re-regulation, and whether the new structure helped both the consumer and the cable industry. With the implementation of the Cable Act's proposals, which were to be in place by the end of 1995, the timing is right for evaluating how the changes have affected cable operators, in addition to the effects on broadcast television and the consumer.

# Chapter II

## Literature Review

### Evolution of the 1992 Cable Act

Congress passed the Cable Telecommunications Act of 1984, removing most municipal regulations from cable systems and making sweeping changes in franchise award and renewal procedures. The act also barred telephone companies from ownership of cable systems in their local telephone service areas. House Telecommunications Subcommittee Chairman Tim Wirth,D-CO, led the Congressional sponsor of the bill. It was the first major revision of the Communications Act of 1934.

On January 1, 1987, rate deregulation provisions of the 1984 act went into effect, freeing operators to charge whatever the market would bear for basic service. Under the Federal Communications Commission standard of effective competition, basic tiers of 20% of the nation's cable systems were still expected to fall under municipal regulation. Rates for deregulation systems were expected to go up 10% because prices had been kept artificially low under local-government regulation.

On June 15, 1988, the National Telecommunications and Information Administration released a report describing barriers to the entry of potential competitors to cable franchises and recommended a video dialatone plan to introduce telco entry into the Television business. After informal talks on Capitol Hill, National Telecommunications and Information Administration Director Alfred Sikes said many legislators were prepared to consider policy changes (Sukow, 1992a,b).

From January 1989 to October 1990 the 101st Congress was ready to approve new regulations for the cable industry, and during the following two years several bills were introduced and hearings were held. On September 10, 1990, House of Representatives 5627 passed the House by voice vote over veto threats from the Bush administration. The bill would impose new rate regulation standards and a program-access provision. A month later in the Senate, a fragile compromise bill drafted by Wirth and Al Gore,D-TN, died as Howard Metzenbaum,D-OH, introduced four amendments to the bill and the cable industry withdrew its support (Sukow, 1992a,b).

On January 14, 1991, ranking minority Senate Commerce Committee member John Danforth,R-MO, introduced Senate 12. The bill's cornerstone included rate regulation, must carry and program access to multichannel distributors. Eight cosponsors stood with Danforth, including Commerce Committee Chairman Ernest Hollings,D-SC, Communications Subcommittee Chairman Daniel Inouye,D-HI, Slade Gorton,R-WA, Metzenbaum and Gore. In early March, House Telecommunications Subcommittee Chairman Edward Markey,D-MA, and John Dingell,D-MI, chair of the parent Energy and Commerce Committee, introduced companion legislation to Senate 12 (House of Representatives 1303), with provisions closely resembling those passed by the House a few months before. The White House and House Republicans urged the delay to allow the Federal Communications Commission to complete a pending cable regulation proceeding (Sukow, 1992a,b).

In May of 1991, the Senate Commerce Committee passed Senate Bill 12 easily with only three dissensions - Bob Packwood,R-OR, Ted Stevens,R-AK, and Conrad Burns,R-MT, - of 19 senators voting. A number of amendments were adopted, including an amendment to allow broadcasters the option of requiring carriage on local cable systems, or the right to negotiate a retransmission fee for use of their signals over cable. In June the Federal Communications Commission adopted its long-awaited cable proceeding. The new rules set a stricter effective competition standard, exposing systems serving up to a third of all cable subscribers to municipal rate regulation. Congress reacted harshly claiming the new rules were deficient. On September 21, 1991, Telecommunications Subcommittee members Dennis Eckart,D-OH, and Jack Fields,R-TX, introduced a House version of the must carry/retransmission consent closely resembling the provision passed by the Senate Commerce Committee. The Senate passed Senate Bill 12, 73-18 on January 31, 1992. Several senators at the time registered doubts about the heavily regulated nature of the bill by voting for a substitute amendment by Packwood (Sukow, 1992b).

The substitute contained most of Senate Bill 12's provisions but deleted program access and had moderate rate regulations. The substitute was defeated 54-35. On March 25, 1992, Markey introduced new House companion cable legislation House of Representatives Bill 4850, modeled after the highly regulated Senate Bill 12 rather than the moderate House of Representatives 1303. The Telecommunications Subcommittee passed the Markey Bill 17-7 on April 8. The bill was passed after a narrow 14-12 vote to reject a substitute based on the 1990 bill that was sponsored by Norman Lent,R-NY,. The Energy and Commerce Committee passed the Markey Bill 31-12 on June 10, but omitted the retransmission-consent and program-access provision to avoid a conflict with the House Judiciary Committee, which threatened to claim jurisdiction over the bill and delay the process beyond hope of 1992 enactment (Sukow, 1992b).

Six weeks later on July 23 the full House passed House of Representatives Bill 4850, 340-73. Telecommunications Subcommittee members Billy Tauzin,D-LA, led a successful campaign to restore the program-access provisions. On September 10, the House and Senate agreed to the provisions of the final bill, including the House's program-access and rate-regulation provisions and the Senate's retransmission-consent provision. Seven days later the House approved the Senate Bill 12 conference report 280-128. Before the vote, members received a letter from President Bush attacking the bill's heavy-handed provisions and pleaded for a veto. On September 22, the Senate passed the conference report 74-25 sending the bill to Bush with more than two-thirds support in both houses and in time to avoid a pocket veto. Bush vetoed the bill on October 3 saying Senate Bill 12 illustrated good intentions gone wrong, fallen prey to special interest. The Senate voted 74-25 and the House 308-114 to hand Bush the first veto override of his administration (Sukow, 1992b)

The following is a more in-depth look at the major issues of the 1992 Cable Act.

**Retransmission Consent**

Television stations had to either demand that local cable systems carry their signals or notify them of their intent to negotiate for money or some other compensation for allowing them to carry their signals, according to musty-carry and retransmission/consent rules laid down by the FCC during the week of March 7, 1993 (Flint, 1993g).

The Federal Communications Commission rejected Hollywood's request that stations be required to get copyright permission from their programmers before negotiating retransmission consent, denying programmers an opportunity to share directly in any fees. Retransmission consent constitutes a new communications property right, created by Congress that adheres in the broadcaster's signal (Flint, 1993g).

Continental Cablevision Inc., released requests for proposals for up to 1 million or more A/B switches that would have allowed cable subscribers to pick up broadcast signals off-air in an attempt to avoid paying broadcasters for programming. Their cover letter stated the Cable Act requirements were likely to necessitate removal of certain broadcast stations from Continental's cable systems as early as June of 1993. Continental Cablevision stated, "...this necessitates prompt action on our part, and therefore, we have set an aggressive schedule in the matter of this." Other Multiple System Operators threatened to resort to A/B switches rather than pay retransmission-consent fees mandated by the new law. In the scenario, subscribers would view network programming by switching to an off-air antenna. Industry observers did not see this as a good solution because it created customer inconvenience or, in some cases, delivered low-quality off-air signals (Weinschenk, 1993a).

The Federal Communications Commission spelled out the rules of the retransmission-consent/must carry rule in 1993. With a June 1993 deadline, broadcasters had to decide if they were going to gamble away retransmission consent/must-carry, and decide how important local broadcast stations were to their systems. If a broadcaster and cable operator could not reach an agreement on retransmission consent, then the station in question was off the system for three years until the next negotiation window opened up (Flint & Brown, 1993f).

Retransmission consent did not just mean money. With most broadcasters having to negotiate with several cable systems in their area of dominant influence, it was imperative a generic formula for retransmission consent emerge. Many broadcasters had to negotiate with 10 to 100 cable systems in their Area of Dominant Influence, and not all of those systems would have the same desire for the broadcaster's signal(Flint & Brown, 1993f).

Just weeks before the June, 1993, decision regarding retransmission, many broadcasters indicated they were willing to look at other options other than money in return for carriage. These included promotional spots on cable systems or joint promotional efforts, channel space for programming or co-operative news efforts (Flint & Brown, 1993f).

The Federal Communications Commission viewed retransmission consent as a new communications property right created by Congress, that inheres in the broadcaster's signal, and this right was distinct from copyright, which applied to the programming carried on the signal. Under the rules, broadcasters who opted for retransmission consent had to finish negotiations by August of 1993 so cable systems could notify subscribers by September 6, 1993, of signals that may be dropped in the event negotiations failed. The must-carry rule required cable systems to carry all qualified stations within their Area of Dominant Influence by late May or early June of 1993. Cable operators also had to notify any commercial station that may not qualify within 30 days their signal may be dropped (Flint, 1993g).

During 1993 many broadcasters followed the Fox Network and its talks with Tele-Communications(TCI) over retransmission consent. TCI had no plans to voluntarily drop stations carried on its system, according to Robert N. Thompson, senior vice president for communications and policy planning. All total TCI had more than 400 individual contacts with local broadcasters in its systems regarding retransmission consent (Flint & Brown, 1993f).

**Copyright Arguments**

On the first day of the 103rd Congress two bills out of Judiciary's Copyright Subcommittee were introduced to scuttle the part of the cable act broadcast lobbyist had worked two years to enact. Copyright Subcommittee Chairman William Hughes,D-NJ, and ranking subcommittee minority member Carlos Moorhead,R-CA, introduced a measure to House of Representatives 12 to insure that television program producers got a share of retransmission consent revenue. Barney Frank,D-MA, introduced the Cable Television Amendments Act, which sought to repeal retransmission consent outright. Frank's intentions were to introduce the bill before the end of 1993 calling retransmission consent potentially very anti-consumer because broadcasters, with their market strength, could demand unreasonably high payments from cable systems, and the cable systems would pass the expense on to the cable subscriber (Flint, 1993b).

Frank's bill from the beginning did not receive any chance of survival because it would strike out the retransmission-consent amendment enacted in 1992. The Energy and Commerce Committee had shown solid support of retransmission consent which made Frank's bill highly unlikely (Flint, 1993b).

Hughes and Moorhead's proposal was expected to receive much support. Hughes was asking Congressional members who opposed retransmission to sign on as co-sponsors. Hughes said a problem existed because broadcasters were wanting to sell other people's industry. National Association of Broadcasters President Eddie Fritts noted that Congress enacted retransmission consent in some form three times since 1927. In each instance Congress recognized provisions governing broadcast transmission rights do not have any impact on provisions governing programmers' copyright interest (Flint, 1993b).

Another issue facing retransmission consent was if a programmer could have a claim to any retransmission-money a broadcaster gets from a cable system for signal carriage. Syndicator Tribune Broadcasting Company told the Federal Communications Commission to declare retransmission consent-type clauses in programming contracts void when it comes to a station's ability to exercise its statutory right to retransmission consent; this allows a broadcaster to negotiate a fee with a cable operator for signal carriage. Tribune said the Cable Act spoke in terms of retransmission of a station's signal rather than the retransmission of constitutional elements of the signal such as individual programs. Congress could have granted equivalent rights to those who own the programs themselves - copyright holders - but chose not to do so (Flint, 1993a).

The broadcast networks and the National Association of Broadcasters echoed Tribune's views, while the Motion Picture Association of America countered that retransmission consent was flawed and programmers had a legal right to any retransmission consent money (Flint, 1993a).

Syndicator, broadcaster, cable programer/operator Viacom Inc., sided with the studios and asked the Federal Communications Commission to require that a local station electing retransmission consent to provide a cable system with a written certificate signed by the station stating that it has expressed authority from its video programmers to grant retransmission consent (Flint, 1993a).

**Negotiations For Retransmission Consent**

A survey conducted by Cablevision and CableFile research, suggested many broadcasters were ready to reap some type of financial reward from retransmission consent negotiations. Their research showed that a majority of broadcasters would seek compensation from operators and they planned to open negotiations immediately after the Federal Communications Commission finalized its retransmission consent guidelines. Two of the respondents to the survey said their broadcast signal was worth $1 per subscriber per month (Kerver, 1993).

But most of the broadcasters believed they would be harmed if their stations were dropped by cable systems. The Cablevision research, conducted in November and December of 1992, focused on group owners and VHF station managers - those most likely to consider seeking compensation for carriage of their signals. Survey questionnaires elicited replies from owners and managers who collectively were responsible for 362 stations nationwide, and they were evenly divided among ABC, NBC, CBS, and Fox Broadcasting Company affiliates (Kerver, 1993).

Broadcasters have always argued they have the right to seek compensation from cable companies carrying their signals while the cable industry argues they have done enough for broadcasters by allowing them to reach a larger audience and improved picture quality. Monetary compensation was at the top of the broadcast wish list, but there were a number of broadcasters who were interested in pursuing a joint broadcasting/cable effort. Under the Cable Act, compensation for cable carriage did not necessarily have to be money, and a broadcast station could elect to seek any compensation for must-carry protection. One compromise between broadcast and cable would be a joint news or promotion effort (Kerver, 1993).

About 69% of the respondents in the survey admitted they would be seriously or moderately hurt in the event they were dropped by a cable system; 66.3% responded they believed that would not happen. The potential for harm would give a cable system operator the opportunity to negotiate from strength. Broadcasters, however, felt they had a strength in the news, which reaches a potentially large audience. Bernie Langheim, General Manager of Cox Cable's Roanoke System, was quoted as saying, ". . . they (broadcast) have a pretty firm hand on the local news market, so it would be more than slightly foolish for us not to carry them." The types of compensation broadcast would consider seeking included monetary payments, <u>must-carry</u> status, and joint broadcast/cable efforts. A percentage of broadcast stations (30%) said they would not seek compensation (Kerver, 1993).

How much monetary compensation broadcast would ask for varied in the survey, but one figure repeated was in the 25-cent per subscriber range. Although there had been disagreement between broadcast and cable, a large number of respondents said there was a good working relationship - Excellent (20.5%), Good (46.6%), Fair (25.0%) (Kerver, 1993).

**Must Carry**

The Cable Act's <u>must-carry</u> provision was upheld by a vote of 2-to-1 in the U.S. District Court for the District of Columbia during the first of April, 1993. The cable industry said it would appeal to the U.S. Supreme Court. The majority opinion by Judge Thomas Jackson was there was a compelling government interest in must-carry because it restored the competitive balance in the distribution of video service. The court did not rule on the constitutionality of the 1992 Cable Act's retransmission consent provisions. But the industry said the must carry decision did not fall in the favor as it related to retransmission (Cable World, 1993b).

The must carry provision that was upheld by the District Court required cable operators to set aside a third of their channels for local broadcast signals. The provision went into effect June 2, 1993. Cable programmers and would-be programmers were concerned the must carry would eventually make it hard for new networks to get channel space. Another concern was that broadcasters who were seeking inclusion in more than one Area of Dominant Influence for must carry purposes would further limit an operator's choice in what programming it carried on the system (Flint, 1993l).

**Broadcast Television's Reactions**

During the final weeks of May, 1993, CBS and NBC, two of the five major broadcast groups, said they would forgo must carry protection and seek compensation for the right to carry their seven owned and operated stations. CBS Senior Vice President Jay Kriegel indicated CBS was primarily interested in cash for retransmission consent. CBS made the announcement at its affiliate meeting in New York. The decision was not a surprise. CBS had led the broadcast industry effort to attach the retransmission consent/must-carry provision to the 1992 Cable Act (Foisie and McClellan, 1993a).

Kriegel complained major Multiple System Operators such as TCI, Time Warner, Comcast and Cablevision Systems had already violated the spirit of the Cable Act by declining to negotiate on a market-by-market basis. CBS affiliates were pleased with the strength of the statement showing it provided support for stations wavering between the risk, and possible monetary rewards, of retransmission consent and the security of must carry. At the meeting CBS proposed a plan aimed at restricting CBS affiliates to their Area of Dominant Influence so that cable operators could not play one affiliate against another in negotiations. In exchange for the station's cooperation, the network said it would extend long-term non-duplication protection to affiliates, which gave them the right in some cases to block the importation into their markets of other affiliates (Foisie and McClellan, 1993a).

Fox affiliates were pressing Fox network executives for longer affiliation agreements and a block of time to program on Fox's cable channel at its affiliation meeting. The affiliates wanted the standard two-year affiliation contract to be upped to five years. In late May of 1993, Fox had an agreement with only Tele-Communications Incorporated to carry the network. Under the terms of the agreement, TCI payed Fox 25 cents per subscriber and Fox then offered affiliates the choice of taking seven cents per subscriber outright or five cents per subscriber, and an equity interest in the cable channel (Flint, 1993m).

**Implementing Must Carry**

Full compliance of the Cable Act was June 2, 1993. In late May, cable operators were still trying to comply with the mandate for adding all commercial and non-commercial broadcast stations that qualified for must-carry status. Viacom mounted a last-minute challenge to the must-carry rules filing a lawsuit on May 26, 1993, in the U.S. District Court in Northern District of California in San Francisco. Viacom challenged the constitutionality of the Cable' Act's must-carry provision on First and Fifth amendment grounds (Pasdeloup, 1993c).

Viacom also asked the court to stay the June 2 deadline providing some examples of must-carry's impact. Viacom said its system in Marin County, California had been forced to combine C-SPAN and Prevue Guide on one channel and Brave and C-Span II on another to make room for must carry provision. It also had to drop a popular PBS station that did not qualify for must-carry and replace it with another PBS outlet that did meet the criteria. The public uproar created by the channel lineup prompted a local franchising authority, the Board of Supervisors of Marin County, to file a declaration with the court supporting Viacom's request (Pasdeloup, 1993c).

The Federal Communications Commission also received its share of complaints. The Federal Communications Commission had received 60 requests from non-commercial stations claiming they were denied carriage on cable systems even though they had qualified under the must-carry rules (Pasdeloup, 1993c).

**Successful Retransmission Consent Deals**

Tele-Communications Incorporated finalized an agreement with 14 stations in five of the top ten media markets in its retransmission-consent negotiations in late June of 1993. The deals involved no direct payment for carriage of a broadcaster's signal and ran the gamut from second channels to contractually bound must carry. The new deal would allow the broadcast station and cable system not to impose any new tax on the subscribers. TCI reached agreements with eight stations owned by Chris-Craft/United Television, four with Times Mirror Broadcasting, Cox Enterprises' Pittsburgh NBC affiliate WPXI-TV and Channel 50 TV Corp.'s WPWR-TV Chicago (Flint, 1993m).

Times Mirror and Cox negotiated for second channels from TCI, while Chris-Craft reached an agreement for contractual must carry on a common channel for all its stations throughout its ADI's, and agreements to explore additional business relationships in other areas. Cox planned to program locally produced shows for its cable channel. Some programming might be local, some of it could also be syndicated. The biggest question facing broadcasters who wanted - and received - a second channel was what to program. It could mean program syndicators would have a new outlet to sell shows that had been sitting on the shelf. Broadcasters, with an abundance of programing, could also use the channel to relieve overstocked programing libraries (Flint, 1993m).

The deadline for implementation of the must-carry, retransmission consent fell on June 17, 1993, but most broadcasters and cable companies had already established a partnership well before then. Most commercial stations - affiliates and major independents - took the retransmission consent route, but there were many that opted for must carry in a substantial number of small or outlying systems. Among stations opting for must carry were the Paramount-owned stations and The Walt Disney Companies' KCAL-TV in Los Angeles (Flint, 1993n).

Broadcasters going for retransmission consent split on the cash situation. Some broadcasters would insist on money - 15 cents to 50 cents per subscriber per month - others would entertain advertising, contractual carriage or local programming arrangements. Some examples of agreements between broadcast and cable included Cablevision Systems Corporation in New York and Boston, which took a no-pay stand, but would offer broadcasters a free channel and a package of free advertising time valued at one million dollars to promote the channel in exchange for retransmission consent. CBS said it would settle for must carry on independently owned systems with fewer than a thousand subscribers. Cable pioneer Ted Turner made noise in Atlanta by telling area cable systems they would have to carry Turner's Cartoon Network for retransmission consent to superstation WTBS-TV (Flint, 1993n).

**Home Shopping In The New Regulatory World**

The question regarding home shopping was settled in July, 1993 when the Federal Communications Commission voted two-to-one to grant must-carry status. Commissioner Ervin Duggan disented saying the commission was putting forward a minimalist definition of the public interest standard instead of mending and refurbishing. Chairman James Quello said the Federal Communications Commission's decision was promoting a view that home shopping pitches are not commercial; that home shopping messages, instead, constitute education and entertainment. The Federal Communications Commission had received pressure from Washington not to grant must-carry to home shopping. Senator John Breaux,D-LA, and House Energy and Commerce Committee Chairman John Dingell,D-MI, wrote Quello registering his opposition (McAvoy, 1993a).

Dingell called the decision a mistake and he was going to press for a meaningful limit on commercialization as well as a meaningful definition of the public interest responsibilities of television licensees (McAvoy, 1993a).

Quello felt compelled to grant the must-carry status saying if the stations have qualified for license renewal they are operating in the public interest and are eligible for carriage. Quello added if the Federal Communications Commission had refused to grant them must-carry rules it would undermine the must-carry rule. Quello also noted many home shopping stations were minority owned and the Federal Communications Commission wanted to increase minority ownership in the business (McAvoy, 1993a).

**NBC Announces New Cable Channel**

NBC announced it would consider launching a new cable channel and would take a carriage form of retransmission consent payment. NBC was going to launch three cable networks and offer their affiliates a financial interest in at least one of the networks if affiliates allowed the network to handle retransmission consent negotiations for them (Flint, 1993o).

One of NBC's new cable networks would be a news and talk network that would focus on one or two major news events of the day, and would feature debates, detailed coverage, analysis, audience participation, and some interactive elements. Another channel would be a Latin American news service - NBC Noticias. NBC would offer this channel to U.S. cable operators that would have an interest in such a service. The final channel consideration was a full-scale rollout of NewsSports, a 24-hour sports news channel (Flint, 1993o).

One source close to NBC said the broadcast giant planned to offer its affiliates a financial interest in the news/talk channel in return for permission to handle all retransmission consent negotiations. If NBC followed through with its proposed channels it would follow Fox in seeking to use retransmission consent negotiations as a means of launching a new cable channel (Flint, 1993o).

**New Advertising Revenue From Must Carry**

Cable Networks were also hoping to seek more ad revenue as a result of must-carry/retransmission consent. Cable Networks Incorporated commissioned an ongoing study of the status of negotiations in the top 100 markets. One message that came from the survey was for advertisers to buy cable spots upfront because the cable networks would not be affected by the retransmission-consent/must carry controversy. But two other surveys indicated a majority of cable homes would cancel their subscriptions if a broadcast network signal was dropped by their cable system. One of the surveys, commissioned by TCI, indicated 59% of cable subscribers would cancel their cable subscriptions if their cable system did not carry ABC, NBC or CBS (Stern, 1993b).

The prospects of broadcast stations being dropped from cable systems would push advertisers toward spot cable. One source indicated $25 million worth of spot business could migrate to their cable market because of concerns over cable systems dropping some broadcast stations. But as the October 6 deadline for retransmission consent approached, the survey found broadcast stations would be in good shape because of baseball's World Series and the start of football season (Stern, 1993b).

As the October deadline approached, Senator Daniel Inouye, D-HI, asked top cable operators why they were refusing to pay cash for retransmission consent, and asked the Justice Department and the Federal Trade Commission to look into possible collusion (McAvoy, 1993c).

Inouye was one of the leading members of Congress that granted broadcasters retransmission consent rights, which entitled them to sell their signals to local cable systems. Inouye wrote a letter to 12 cable operators demanding answers about the tactical and semantic uniformity of their no-cash retransmission consent position and revealed that he had called on the Justice Department and the Federal Trade Commission to look into the matter (McAvoy, 1993c).

Six weeks before the deadline for must-carry, broadcasters began accepting the fact they would not receive anything in return for their signal. When Congress gave broadcasters the right to charge for cable carriage they were hoping to produce a new revenue into over-the-air television. Instead broadcast was being drawn into the cable business with subscriber fees for existing or newly created cable channels emerging as the new retrans currency (Flint, 1993q).

**Channels Born From Retransmission Consent**

The tone was set when Fox announced it would create a cable network and give affiliates a cut of the subscriber fees in lieu of a direct retransmission-consent payment from cable operators. ABC and Hearts Broadcasting followed with ESPN2, their own new cable channel, and made deals for their own stations, but not for ABC affiliates. Tribune and the Providence Journal Company became partners in the new Television Food Network, and offered operators their stations for free as incentive for carriage of the new channel (Flint, 1993q).

NBC signed a deal with Time Warner that allowed operators to continue carrying the NBC-owned stations on its systems for no charge. In return, Time Warner would extend its contract to carry NBC-owned cable channel CNBC and the network's new news-talk channel, America's Talking. Under the terms of the seven-year deal, Time Warner would pay a fee of 10 cents to 15 cents per subscriber for the new channel (Flint, 1993r).

Capital Cities/ABC and Hearst Broadcasting moved to allow Continental Cablevision carry ABC-owned and Hearst-owned stations for free. In return, Continental agreed to a nationwide rollout of ESPN2 - the Capcities/ABC and Hearst Corp., - owned cable network spin-off of ESPN (Flint, 1993p).

Some reports close to the deal said Continental would pay as much as 50 cents per subscriber over the life of the contract. Other sources said the average was in the mid-teens, considered about par for a mid-level service (Flint, 1993p).

The agreement was expected to force NBC, CBS, and local broadcasters to rethink their own retransmission consent strategies. The Continental agreement strengthened the no-cash position the cable industry took on retransmission consent. Under the terms of the deal, Continental would put ESPN2 on all its systems, not just the seven where ABC and Hearst had stations. Continental has just under 3 million cable subscribers and is the nation's third-largest cable operator (Flint, 1993p).

ABC's first choice was not to include ESPN2 in retransmission consent negotiations. The group owner approached Continental and other operators seeking cash but was unable to get anywhere. ABC was finally convinced it would be better off trying to build long-term assets rather than extracting a few dollars on a month-to-month basis (Flint, 1993p).

CBS entered the cable industry in the late August of 1993 signing a deal with Comcast, the nation's fourth-largest cable operator with almost three million subscribers. In return for carriage of the new network and payment of a subscriber fee, Comcast would retransmit the CBS-owned stations on its systems for free (Flint, 1993r).

CBS refused to confirm the Comcast deal at the time, but a spokesperson said the network had talked with operators about a new programming venture, and that CBS was seeking cash from operators. At the time the unnamed cable service was expected to launch in the early part of 1994. The decision by CBS to start a cable network was not part of a strategic business plan, but a response to its inability to get major cable operators to pay a retransmission consent fee for carriage of its owned TV station (Flint, 1993r).

With the offer of a cable network, operators could now have the incentive to carry the CBS-owned stations for free while paying for the new service. Without the cable network, CBS faced the prospect of having its owned stations dropped from cable systems, a move that would have meant a drop in audience reach and a decrease in advertising revenue. That proved too dangerous a prospect, especially when the other broadcast networks had used cable networks to reach agreements with operators (Flint, 1993r).

CBS's decision to go cable marked a stunning victory for cable and a bitter loss for CBS. Cable had for the most part stood firm on its vow not to pay broadcasters for retransmission without getting something in return (Flint, 1993r).

Since many broadcasters realized there would be little money from retransmission consent, the idea of creating a cable network had grown. Scripps Howard Broadcasting Company launched the Home and Garden Network which was the basis for retransmission consent for its ten television stations. The 24-hour channel made its debut in 1994. Scripps Howard signed a six-year deal with Continental Cablevision to carry HGTV. Scripps Howard also carries two networks, which focus on home improvement, repairs, decorating and gardening. In addition to HGTV, Scripps Howard Broadcasting's cable programming interests include a general partnership in the Television Food Network (Flint, 1993r).

**The Rating Game**

Nielsen and Arbitron, the two largest rating services in the country, were preparing for what was being called a worst-case scenario with the potential of broadcast stations and cable networks being dropped from cable systems or forced from their traditional channel positions. Arbitron had already seen changes on cable lineups around the nation. Between January and June of 1993, the company had made 1,718 changes in metered cable lineups(Stern, 1993a).

A concern of both Nielsen and Arbitron was the introduction of the A/B switches in metered homes. The switches would allow viewers to select either broadcast or cable reception. Under the new regulations, cable systems had to provide subscribers the switches if a broadcast station was dropped off its system. Arbitron pledged to stay on top of cable systems' channel lineups. Arbitron was going to maintain two databses for its metered service: one to keep track of current activity and another to track upcoming changes in a channel lineup (Stern, 1993a).

**Extending Deadlines**

Fox Broadcasting asked its affiliates to give their local cable operators 60 days of free retransmission consent so the network could continue to negotiate with operators for carriage of its FX cable network and its affiliate stations. The affiliate board of governors met in Los Angeles and chose to recommend that all Fox affiliates grant the 60-day status quo effective October 6, 1993. Fox was buying itself time to talk with Time Warner, Continental, Comcast, Cablevision Systems and others that had not signed up with its plan. Fox was offering operators carriage of its local affiliates in exchange for carriage of its new general entertainment channel, FX, at 25 cents per subscriber. Fox would then give five affiliates a seven-cent cut from the fee, or five cents if affiliates wanted an equity interest in FX (Flint, 1993s).

However, with ABC, CBS, and NBC working on cable networks at a substantially lower price, operators wanted

Fox to cuts its price. ABC and NBC structured their deals to start in the 10-cent range and steadily increase during the life of the contract. Cable operators warned Fox to get on system, or face losing their channel space. Under pressure from the system, many Fox affiliates wanted to negotiate their own deals (Flint, 1993s).

**Major Losers In Must-Carry**

One major loser in must-carry was C-SPAN, which lost 500,000 subscribers because of must-carry. In the summer of 1993, C-SPAN lost another one million subscribers completely or to a part-time carriage as systems retiered rates and channel lineups (Cable World Staff, 1993c).

C-SPAN was bracing for more cuts as MSOs attempted to forge retransmission consent agreements that included new cable network launches for ESPN2, America's Talking and FX - all owned by broadcast networks wanting to exchange retransmission consent for carriage of their new networks. Cable systems were being forced to drop cable networks to add new must-carry stations. Tele-Communications Cablevision, a 14,688-subscriber system in Steubenville, Ohio, added five Public Broadcasting Service stations and dropped C-SPAN (Cable World Staff, 1993c).

C-SPAN and Turner Broadcasting Systems Inc. jointly filed a lawsuit claiming the 1992 Cable Act's must-carry provision violated cable operators' First Amendment rights (Cable World Staff, 1993c).

**CBS Backs Off Money For Signal Deal**

CBS finally gave up on its retransmission consent effort and granted cable operators a year-long extension to carry its seven owned stations on their systems for free. After holding out for longer than any of its rival networks, CBS tried to launch a cable network to offer with its stations for retransmission consent. CBS's first idea of a news and public affairs network did not sell with cable operators. CBS partnered with Viacom to work on a general entertainment network with a "best-of-television" format, but Viacom's proposed merger with Paramount and the fight with rival bidders put any partnership with CBS on hold. In a last-ditch effort, CBS offered to buy into NewSport, a new cable sports news channel owned by TCI spin-off Liberty Media, NBC and Cablevision's Rainbow Holdings. CBS wanted a 70% stake and management control, which was more than the others were willing to give (Flint, 1993u).

CBS backed off because of advertising dollars and CBS's coverage of baseball's World Series. The network did not want to waste ratings momentum from Late Night with David Letterman or have its prime time programming cut short just weeks into the news season. CBS also wanted to be fair to affiliates that might have been planning to tie their fate to the network (Flint, 1993u).

CBS's defeat came a week before the October 6, 1993, retransmission/consent musty-carry deadline. Tele-Communications Inc., signed a retransmission consent deal with NBC for America's Talking, and was also finalizing a deal with Capital Cities/ABC Inc., to carry ESPN2 in exchange for ABC signals. NBC also signed deals with Cablevision Industries, TeleCable, Newhouse Broadcasting Company, and Colony Communications. Cablevision Systems Corp., announced its first retransmission consent deal - a deal with Capital Cities/ABC to carry ESPN2, and negotiations were continuing with NBC, Fox Broadcasting Company and Tribune Broadcasting Company stations could be extended. TeleCable also signed an ESPN2 agreement (Stump, 1993b).

For many broadcasters, retransmission agreements resulted in a second expense stream, where potential profit remain uncertain. Providence Journal President Jack Clifford said local cable channels created may take five year to return a profit. The majority of the new retransmission cable channels stem from broadcaster expertise in local news and information programing. Times Mirrors created channels that would be anchored by local news services, but would also contain interview and public affairs programs and possibly time-shifted network, and syndicated entertainment shows (McClellan, 1993a).

Executives at TeleCommunications, the nation's largest cable operator, was expecting to do at least 30 to 50 retransmission deals involving broadcaster-created channels. Most of the TCI-related second-channel deals involve news and information programing (McClellan, 1993a).

When the deadline for the retransmission deals passed in early October of 1993, most broadcast groups watched their hopes of receiving cash from carriage of their signal fade. Although retransmission consent did not produce cash, it did provide many broadcasters with new opportunities. Three of the four major networks, leveraged retransmission to gain carriage for new local and national cable channels (Flint, 1993t).

Other broadcasters made deals that allowed them to sell ad time on cable or receive free promotion. Some provided local news updates to CNN and CNN Headline News (Flint, 1993t).

When did cash disappear from retrans table? For ABC, it was when the Federal Communications Commission prohibited cable operators from passing on retransmission payments to subscribers. For other broadcasters and cable operators, it was when ABC opted to pursue carriage for ESPN2 rather than cash. Hoping to strengthen free over-the-air broadcasting, Congress included in the 1992 Cable Act provisions giving broadcasters the right to either demand carriage on local cable systems (must carry) or negotiate with cable systems for compensation for carriage of their signals (retransmission consent). Stations had to chose one of the options in June of 1993. Most network affiliates and major independents opted for retransmission, but many small independent stations went for must carry and guaranteed themselves cable carriage through their markets. Many broadcast stations threatened to withhold signals from cable systems in their market. By the October deadline, many had given in or had granted short-term retransmission consent to continue negotiations (Flint, 1993t).

In most markets, broadcasters and the cable systems reached an agreement, although, there were a few exceptions. All three network affiliates went dark in Corpus Christi, Texas, when broadcasters could not reach an agreement with Tele-Communications. Portland, Maine; Norfolk, Virginia; Fresno, California; and Grand Rapids, Michigan, were among markets where some broadcast stations were dropped from the system. However, more than 92% of U.S. television stations continued to broadcast with disruption(Pasdeloup, 1993f).

**Ownership Rulings**

The cable industry also had concerns regarding how many subscribers a single cable operator would be able to serve, and on how many channels it could devote to programming services it owned. Investment bankers also jumped in cautioning the Federal Communications Commission to take care in drafting anti-trafficking rules prohibiting the sale of cable systems for three years after their acquisition (Flint, 1993e).

The National Cable Televisions Association announced any programming or vertical integration limits would have to be set at a fairly high level - certainly much higher than the 20% of channel capacity suggested by the Federal Communications Commission. Multiple systems operators, Cablevision Industries, and Comcast said a 25% limit would be acceptable. NCTA and individual cable operators and programmers raised First Amendment concerns. In imposing limits, the Federal Communications Commission had to tread lightly in light of the serious constitutional concerns raised by restriction on a cable operator's use of its channels of communications (Flint, 1993e).

Viacom, owner of MTV and other popular cable networks, told the commission that limits should not apply to "any program service the marketplace had generally found to be desired by consumers on a national basis." Specifically, any program service that was carried by cable systems not under common ownership with the programmer, and was available to more than 50% of subscribers nationwide (excluding subscribers to commonly owned systems), should not be counted toward the channel occupance limits. The Association of Independent Television stations countered that, in recent years, cable's ability to vertically integrate had become a mechanism for extracting equity interest from otherwise independent programmers and limiting the development of independent services (Flint, 1983e).

The Motion Picture Association of America also pushed for the commission's proposed 20% cap. MPAA said this simple and straightforward channel occupancy limit would help to reduce the risk that a cable MSO would favor program services in which there had been a financial stake over those in which it did not. MPAA would not oppose grand fathering an operator's current interests, a stance also endorsed by Liberty Media Corporation. There was also a difference of opinion between cable, broadcasters, and programmers over how many homes passed by cable an operator should be allowed to reach (Flint, 1993e).

The cable industry indicated the Federal Communications Commission's suggested horizontal ownership cap of 25% to 35% of all cable subscribers was too stringent. The NCTA, Time Warner, TCI, and other operators said a national limit of 30 to 40% would not create any undue risk of anticompetition behavior. All opposed regional ownership limits. TCI, the largest MSO, reaches about 12% of the nation's subscribers and 24% of homes passed. The MPAA, on the other hand, endorsed a 25% cap of homes passed nationally (Flint, 1983e).

The investor bank who filed comments warned the Federal Communications Commission of potential pitfalls in writing the anti-trafficking rules indicating that if the commission's regulations achieved a proper balance, they would succeed in maintaining stability and growth, but if the rules are inflexible and overboard, then these sources of funds would look else where(Flint, 1993e).

**User Fee**

Cable will not only have to submit to regulations, it also had to pay for them. Under pressure from the Clinton administration, the Federal Communications Commission considered imposing user fees on cable of up to $30 million a year to cover the cost of administering the many new cable regulations spawned by the Cable Act (Jessell, 1993a).

Behind the initiative was the Office of Management and Budget, which looked to cut cost and raise new revenues wherever it could. National Cable Television Association President James Mooney offered an alternative for funding the cost of cable regulation. Mooney said it sounded like a good use for the money broadcasters derive from retransmission consent. Even before the Cable Act became law, the Federal Communications Commission complained it lacked the resources to effectively implement and administer the many rules mandated by the Cable Act. In 1992 the Federal Communications Commission estimated the cost of cable regulation would fall between $20 million and $50 million a year (Jessell, 1993a).

The Federal Communications Commission budget for fiscal 1993 was $129 million. The Federal Communications Commission asked Congress for an additional $20 million for 1993 to cope with the cable burden. The Federal Communications Commission has the authority to impose user fees, but as a rule it asked for Congressional approval. A proposal in 1992 to raise $71 million in user fees on all media was passed by the House but died in the Senate (Jessell, 1993a).

The Federal Communications Commission's financial troubles and its plan for solving them received attention on March 25, 1993, when acting Federal Communications Commission Chairman James Quello testified before the House Appropriations Subcommittee overseeing the agency (Jessell, 1993b).

Under the Federal Communications Commission plan, all cable television operators would be required to pay 31 cents per subscriber to the Federal Communications Commission each year; an assessment the agency estimates would raise revenue of $16.1 million. In addition, the Federal Communications Commission said broadcasters and the emerging multichannel competitors to cable would be required to underwrite some of the new costs on grounds they would benefit from key provisions of the cable television law (Halonen, 1993a).

Representatives of the cable and broadcast industry made it clear they would oppose the new payments, at least those targeting their own interests. Mooney added a continuing theme of the cable reregulation process seemed to be to add to cost while restricting cable operators revenue(Halonen, 1993a).

The Federal Communications Commission changed its estimates announcing it believed new regulation cost under the Cable Act would likely be around $30 million a year. The Federal Communications Commission would face a lack of funds and it either would have to cut back on existing programs, something it didn't want to do, or win the right to hit the businesses it regulates with new fees (Halonen, 1993a).

**Cable Rates Regulation**

The Cable Act of 1992 directed the commission to establish rules governing rate regulations of cable service to tiers offered by cable systems not subject to effective competition. Effective competition is defined as a market area that is served by more than one cable system. The commission had to first establish regulations that assure rates for the basic service tiers are reasonable and, second, standards that permit identification, in individual cases, of rates for cable programming services that are unreasonable. The Cable Act of 1992 states, since the rate deregulations triggered by the Cable Communication Policy Act of 1984, monthly rates for the lowest priced basic cable service increased by 40% or more for 28% of cable subscribers. The cable industry acknowledged since 1984 the average basic monthly rate had increased 29%, and the average monthly cable rate had grown almost three times as fast as the Consumer Price Index (CPI) since deregulation ("Proposed Federal Communications Commission cable regulations," 1993).

Regulating rates led to the basic question of whether the purpose and the terms of the Cable Act embodied a Congressional intent that rules produce rates generally lower than those in effect when the Cable Act of 1992 was enacted, or rather a Congressional intent that regulatory standards serve primarily as a check on prospective rate increases. The Cable Act of 1992 may encourage if not require a restructuring of a cable system's subscriber rate only if the Federal Communications Commission found the cable system is not subject to effective competition. If the

Federal Communications Commission found a cable system subject to effective competition, the Cable Act prohibits the regulation of rates for that system. Where effective competition does not exist, the Cable Act states that rates for the provision of basic cable service are to be regulated by the franchising authority, while rates for cable programming services shall be subject to regulation by the commission ("Proposed Federal Communications Commission cable regulations," 1993).

The statute establishes three separate tests, any of one of which, if met, would establish that a cable system is subject to effective competition. The first is satisfied if fewer than 30% of the households in the franchise area subscribe to a cable system. The second test is met if the franchise area is; served by at least two unaffiliated multichannel video programming to at least 50% of the households in the franchise area, and the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15% of the households in the franchise area. The third way effective competition may arise is if the franchising authority in the subject area is itself a multichannel video programming distributor and offers video programming to at least 50% of the households in that franchise area. The

1992 Cable Act defines a multichannel video programming distributor as an entity who makes multiple channels of video programming available for purchase by subscribing ("Proposed Federal Communications Commission cable regulations, 1993).

On April 1, 1993, the Federal Communication Commission voted 3-0 to cut cable rates by as much as 15%. According to the commission, about 75% of all cable systems would likely face the rate rollbacks, including rollbacks to September 30, 1992, in the pre-cable act rates. It was estimated the cable industry would lose $1.5 billion in subscriber and equipment revenue during 1993 alone (Flint, 1993i).

The commission issued an immediate freeze on all cable rates on April 5, 1993, that lasted four months. Cable securities, both stock and bonds, lost during the same week. Most cable MSO stocks were off approximately 20% from their levels of only a few weeks earlier (Flint, 1993i).

The cable industry attacked the Federal Communications Commission's actions as being overreaching and excessive. The National Cable Television Association blasted the commission's rules saying it had gone beyond Congressional intent, that it would hurt consumers, hurt cable's ability to advance technically, and that it would face court challenges. James Mooney, president of NCTA, said the commission's action exceeded its authority under the statute, and there was no doubt the issues would end up in the courts. Senate Commerce Committee Chairman Ernest Hollings D-S.C., said he was encouraged by the Federal Communications Commission's decision to reduce cable rates for consumers, but also indicated more was needed to be done to protect them. House Energy and Commerce Committee Chairman John Dingel,D-MI, added modifications to the Federal Communications Commission's action were likely as more data regarding cable rates was gathered (Flint, 1993i).

The commission's actions would, first, require cable operators that raised rates after the 1992 Cable Act was passed by Congress in October, 1993, to roll rates back to September 30, 1992, levels, and after the Federal Communications Commission would roll back basic cable rates up to another 10%. Rate increases after the 1992 Cable Act passed were in the 5% range, making for the 15% total. The rollbacks affected the local broadcast, access, and basic cable programming tiers, but not premium and pay channels such as Home Box Office. Cable systems whose rates, still after the first two cuts, remained above the commission's competitive benchmark would face further scrutiny and possible reduction by the Federal Communications Commission (Flint, 1993i).

None of the commission's rate slashing was automatic.

The commission and/or local franchise was expected to act to lower rates upon consumer complaints, but no one in the industry was expecting a shortage of complaints. The industry would also lose money because of refunds to subscribers. Any subscriber who filed a complaint at the Federal Communications Commission and/or with the local franchises that was valid would get a refund from the date of the complaint. Local franchising authorities would handle complaints on basic cable (broadcast and access channels), while the commission would oversee expanded basic, which included non-pay cable channels such as USA or CNN. To determine rate rollbacks, the commission uses a benchmark formula that would take into consideration a system's size, channel capacity and penetration. The commission did not immediately release the benchmark formula stating it would become available when the Federal Communications Commission released reports and orders on the rate regulations during early summer of 1993 (Flint, 1993i).

Once they got Federal Communications Commission certification, municipalities would check on cable systems. Those that raised their rates since September 30, 1992, would have to roll them back to where they were on that date. Systems above the benchmark price would have to lower their rates another 10% or to the benchmark, whichever is less. Systems could add back inflation between September

30, 1992, and April 1, 1993. The benchmark would vary, depending on the number of channels and other factors (Flint, 1993k).

For example a cable operator who raised a monthly rate 9% from $23 to $25 would have to return to $23. The system would then have to trim another $2.30 (10%) to $20.70, assuming its benchmark was below that figure. Adding back inflation, 2%, for the six months, brought the rate back to $21.12. Bottom line: a rate of $3.88 (18%) lower than it was. If a cable system was well above the benchmark rate, the commission could investigate, and if the system could not justify its high rate, the Federal Communications Commission could force additional cuts to bring it into line with industry norms. Operators who marked up equipment costs higher than their own costs would also have to bring those cost in line. If an operator was found guilty of overcharging for equipment, subscribers would be refunded money, retroactive to the date of their complaint. Local governments could apply for certification as soon as the rules went into effect, some 75 days after release of the official order, which was due in May of 1993 (Flint, 1993k).

The freeze would not preclude operators from adding subscribers, retiering services, unbundling services and equipment, as long as a cable operator did not intend to evade the freeze and the average monthly subscriber bill did not increase over the April 5, 1993, level (Flint, 1993i).

In addition local governments could control rates for basic service, local broadcast stations, public TV, and public access. The Federal Communications Commission would regulate rates for others services such as CNN, ESPN and The Discovery Channel. In both cases, rates would be compared to the Federal Communications Commission estimates of what rates would be if the cable system had competition. Cable operators' revenue had doubled since deregulation, from $10.1 billion in 1986 to $20 billion in 1991. The average monthly cable bill has risen from $7.85 in 1980 to $18.84 in 1990 (Flint, 1993i).

The Federal Communications Commission released its 475-page rule and order on cable rate regulation during the first week of May in 1993, and immediately controversy arose. The biggest problem started when cable operators began requesting rate hearings with the Federal Communications Commission. Tele-Communications Industry president John Malone made the point the new rules would force operators to request rate hearings to prove their cost, and justify their rates, and the Federal Communications Commission would have problems handling the potentially large amount of request. (Pasdeloup & Stump, 1993c).

Part of the rate-regulation rule states operators could be exempt from the commission's benchmark regulation formula if they could show their costs exceeded the benchmark. And one problem that existed with rate-regulation was accounting; the benchmark rate formula included calculations on equipment and installation costs, which could not be readily figured under existing cable system accounting practices. The Federal Communications Commission handed cable operators another set back saying when operators made a cost-of-service showing after a rate complaint, they still had to roll back rates to the benchmark while waiting for a decision. City officials were running into the same problem as cable operators when trying to decipher the benchmark and rate rule (Pasdeloup & Stump, 1993c).

The banking industry found itself in the middle of the Federal Communications Commission's benchmark ruling. A group of 17 banks with more than $16.5 billion in cable commitments told the Federal Communications Commission to reconsider, refine and clarify its rate-regulation benchmark, or the cable industry could have a hard time finding financial support. The banking group wrote to the Federal Communications Commission on June 22, 1993 indicating it was unlikely it would lend new funds to the cable industry until the impact of the Federal Communications Commission report and order was quantified and the cable operators could provide a supportable forecast. Some of the banks went on to say the Federal Communications Commission had permanently dampened their cable lending practices (Neel, 1993a).

Steve Martin, vice president of First National Bank in Chicago said one factor for the amount of loans to cable operators was the predictable cash flow. First National Bank of Chicago had $972.2 million in cable industry loans outstanding in 1992. With the effect of <u>rate-regulation</u>, banks could be less likely to allow long-term loans to cable operators. Total cable industry debt grew from $6 billion in 1982 to $43 billion in 1992 according to Paul Kagan Associates Inc. Banks at 58% and insurance companies at 22% supplied most of the financing (Neel, 1993a).

The bank also backed cable operators' argument that the benchmark formula would not allow operators to upgrade their plant and would discourage the introduction of new services that could generate more revenue. The lack of cash flow because of <u>cable rate-regulation</u> could force small and medium sized cable companies to downsize their payroll and impede the introduction of new entertainment and technology (Neel, 1993a).

One interesting facet to come out of the <u>cable rate-regulation</u> was the benefits cable networks were gaining. Cable operators were adding networks to bring rates in line with the Federal Communications Commission's <u>rate-regulation</u>

benchmark. Among the beneficiaries: Court TV, which added 2.5 million new homes by September, 1993, and the Cartoon Network, which increased its subscriber base by more than one million homes (Cable World Staff, 1993c).

All cable industry regulations went into effect September 1, 1993. Rep. Markey described the 1992 Cable Act as the most important piece of consumer legislation passed by Congress, and promised the new law would save subscribers 1 billion a year. The Act received considerable media coverage the first day. Consumers and franchising authorities also won the right on September 1, 1993, to file complaints with the Federal Communications Commission about what they considered to be unreasonable rates (Pasdeloup & Stump, 1993e).

Two months after the Act went into effect, the Federal Communications Commission froze subscriber rates 90 days and refused to extend the deadline for operators to supply finance information to defend their rates. In the second week of November, 1993, cable operators who wanted to make cost-of-service showings to justify rates higher than the Federal Communications Commission's benchmark would have to provide information by filling out Form 393. Trying to avoid another round of rate hikes and facing a rulemaking jam, the Federal Communications Commission on November 10, 1993, extended the rate freeze through February 15, 1994.

The extension stopped operators from raising rates or passing through increases in programming cost, franchise fees or costs tied to inflation rates. If the freeze had ended November 15, 1993, operators whose rates were under the Federal Communications Commission's benchmark would have been able to raise prices if their cities had not been certified (Pasdeloup, 1993g).

Many cable operators recognized the small and medium-sized operators would be hurt the most by the extension. The Federal Communications Commission voted 2-to-1 to extend the freeze on cable rates. Cable operators said the freeze was an indication the Federal Communications Commission was not equipped to enforce the new rules (Pasdeloup, 1993g).

The Small Cable Business Association filed an emergency petition with the Federal Communications Commission asking it to devise interim procedures for small operators while the rules are being reconsidered. Small cable operators were given temporary relief from the rate regulations including the use of cost-of-service regulations. The cost-of-service fee structure allows operators to charge rates based on the actual cost of providing service instead of using the benchmark formulas, which sets rates according to the number of cable networks carried (Pasdeloup, 1993g).

The National Cable Television Association said bills for regulated service dropped 10.5% nationwide after reregulation in 1993. The per-channel price for basic service fell to 15% (Pasdeloup, 1993g).

The Federal Communications Commission unanimously decided to roll rates back another 7%. This, added to the 10% reduction in April of 1993, meant cable operators had to cut rates a total of 17% from those charged before the 1992 Cable Act was passed in October of 1992. The National Cable Television Association said it would challenge the Federal Communications Commission decision in court, but Federal Communications Commission Chairman Reed Hundt called the decision to decrease rates again a brilliant balance between the needs of the cable industry and consumers (McAvoy, 1994d).

It was predicted the rate rollback would affect 90% of all cable systems resulting in a $3 billion savings to customers. Key Congressional Democrats were not satisfied after reports indicated only 66% of cable subscribers saw a drop in the cable bill after the first rate rollback. The second rollback went into effect in mid May of 1994 (McAvoy, 1994d).

Ray Joslin, group head of Hearst Entertainment and Syndication Group, which has an interest in A & E, Lifetime and ESPN, indicated the cable industry was being treated like a quasi-public utility where the government is mandating price mark-ups, but not providing a guaranteed rate of return. Joslin indicated it was unfair to treat cable as a quasi-public utility while cable penetration in the United States is only at 63% (Flint, 1993d).

The Federal Communications Commission announced the guidelines for operators that believed the cost of providing cable service is justifiably higher than the benchmark. The new cost of service rules allow a rate of return of 11.25% after taxes, but bar operators from including acquisition costs above book value in the rate base. The Federal Communications Commission announced it would not allow acquisition costs that are based on collecting supercompetitive rates. Questions also remained regarding what would be allowed for intangible cost such as customer lists and franchise rights. The Federal Communications Commission also said it would not allow operators to finance upgrades through rates charged to basic subscribers. The Federal Communications Commission also adopted streamline cost showings for upgrades. Under the streamlined showing, cable operators can recover the cost of an upgrade (Stern, 1994c).

Results of an Federal Communications Commission survey released in February of 1994 confirmed the preliminary findings that a majority of subscribers - an estimated 67.6% - saw their bills go down while 30.5% saw rate increases (Stern, 1994d).

The increases came mainly because cable systems shifted their rate structure to comply with the new rules. The survey also confirmed that drops in reregulated cable bills came largely from decreases in equipment charge rather than reductions in the cost of rates. On average, monthly cable bills decreased $1.50 from $25.61 to $24.11. The 10% benchmark on September 1, 1993 brought rates down only slightly while equipment and installation rates dropped substantially. Total savings to custmoners due to cable reregulation could be as much as $1 billion (Stern, 1994d).

The survey included data from the top 25 Multiple System Operators. The survey also showed average basic-only programing increased 2% or 21 cents, average charges for all tiers declined 1.5% or 34 cents, and 30.5% of subscribers saw their bill increase. The survey also highlighted the move by nine of the top MSO's into a-la-carte programming. Subscribers to the nine cable systems that moved channels to a-la carte tiers saw their bills go down 3.9% on average. Subscribers to systems that did not move channels to an unregulated tier saw a 5.9% average decrease. The Federal Communications Commission based its revenue estimates on cable system rate cards and follow-up calls to operators (Stern, 1994d).

Equipment cost was a category where subscribers saw the greatest savings. Surveys indicated that more equipment, including converters, and remote controls decreased 90% on average from $2.08 to 23 cents. Rates for additional outlets were reduced on average by 97% from $4.69 to 14 cents. Installation charges also were reduced by 27.6% (Stern, 1994d).

One final effect of the rate increase was reported in April, 1994, when Federal Communications Commission Commission Andrew Barrett told cable and advertising executives in New York the 17% rate rollback would stymie cable's growth and there would be much uncertainty about cable's cash flow. Barrett wanted the Federal Communications Commission to set up an economic environment for cable, but not overly interfere with the Federal Communications Commission and the economic environment (Cooper, 1994).

**Effective Competition**

For purposes of implementing rate regulation by local franchising authorities, cable operators would be presumed not to be subject to effective competition. Franchising authorities would be able to rely on this presumption when filing a certification to regulate basic rates with the commission. The cable operator would then have the burden of rebutting this presumption with evidence demonstrating effective competition does exist. To ensure cable operators access to the data they need to mount a successful challenge to the presumption against effective competition, alternative multichannel distributors would be required to respond, within 15 days to request from cable operators for relevant information. Responses by the alternative distributors could be limited to the numerical totals needed to calculate the distributor's reach and penetration in the franchise area (Proposed Federal Communications Commission cable regulation, 1993).

**Equal Access**

The program access rules force vertically integrated cable operators such as TCI to offer their programming to multichannel competitors on the same terms. Competitors such as wireless cable operators complained for several years vertically integrated cable companies would refuse to deal with them on fair terms. The commission went past what Congress requested in the Cable Act (Flint, 1992j).

The Cable Act's program access provision required cable program service owned, or partially owned, by a cable operator to void most of their exclusive contracts with cable systems and to make their services available to other potential multichannel competitors to cable, such as direct-broadcast satellite systems and wireless cable. Under the commission's rules, a programmer does not have to be vertically integrated to be subject to its program access rules, although complaints over exclusive contracts will be limited to vertically integrated programmers (Flint, 1993j).

The commission outlawed exclusive programming contracts between vertically integrated programmers and cable operators in areas not served by cable operators. Exclusive contracts in areas served by cable, except those entered into before June 1, 1990, may not be enforced unless the commission determines the contract is in the public interest. All other programmers with such contracts had four months from the effective date of the rules to bring their agreements into compliance with the new regulations. The burden of proof is also on the cable programmer, not the competing distributor. To determine whether a programmer was engaging in unfair behavior, the Federal Communications Commission said it would compare the programming contract of the complaining distributor with the programming contract its competitor has. The commission said discrimination between competing distributors will have occurred when any of the following factors do not exist: 1. cost differences at the wholesale level in providing a program service to different distributors; 2. volume differences; 3. differences in credit worthiness, financial stability or character and 4. differences in the way the service is offered.

In evaluating a discrimination complaint, the commission will use a two-step method focusing on the difference in price paid by or offered to the complainant as compared with that paid by the competitor. The programmer must then justify the difference in rates. The programmer will have to submit other contracts it has signed with distributors that it believes are similarly situated to the complainant (Flint, 1993j).

**Customer Service Standards**

The Federal Communications Commission established customer service standards for cable systems that range from how long it should take to perform installations or repairs, to how many times the phone can ring before it is answered. The Federal Communications Commission's new rules require customer service and bill payment locations to be conveniently located (Flint, 1993h).

Installations are to be performed within seven business days of an order being placed. If there is an interruption in service, the operator must start repairs no more than 24 hours after the interruption becomes known. An operator can give a subscriber a four-hour window for repair appointments. If the appointment is canceled, the customer will be contacted and rescheduled at the customer's convenience. Rate and programming changes also must be announced at least 30 days in advance. Local operators, the Federal Communications Commission said, must keep normal business hours, hours similar to those of businesses in their community and must include some evening and weekend hours. Operators must provide a local, toll-free or collect phone line 24 hours a day, seven days a week. Phones must be answered within 30 seconds, and transfers must also be made within 30 seconds. Rate and programing changes also must be announced at least 30 days in advance (Flint, 1993h).

Busy signals will be allowed less than 3% of the time. Operators also have 10 years to eliminate the practice of requiring subscribers to purchase any tier of service other than basic broadcast, to subscribe to pay services. In compliance with the antibuythrough provision, the National Cable Television Association has said it will cost systems $260 million to $580 million annually during the ten-year, phase-in period to meet technical requirements. Operators will also be prohibited from price discrimination between subscribers seeking basic service and pay with no basic cable versus those who buy a basic cable tier as well. Operators will also be prohibited from price discrimination between subscribers seeking basic service and pay with no basic cable, versus those who buy a basic cable tier as well (Flint, 1993h).

**Indecency Rules**

Cable system operators, users of leased access and public channels, and education and governmental programmers have clashed over how the Federal Communications Commission should implement rules for indecent programming on such channels, and whether operators should be required to carry such channels at all. At its November, 1992 meeting, the Federal Communications Commission proposed rules requiring cable operators to channel indecent programs, as identified by programmers, to a single leased access channel and required operators to block access to such channels unless a subscriber requests access (Flint, 1992c).

Operators could also prohibit the use of access channels for programming that contains obscene material, sexually explicit conduct or material soliciting, or promoting unlawful conduct. As the law continued to be implemented, the commission was still attempting to define indecency and what sort of blocking devices operators should use (Flint, 1992c).

The National Cable Television Association said access channels strip the operator of control over its channel capacity and reduce the number of channels available for programming. Some MSO's say this is taking away their First Amendment rights. The MSO answered the Federal

Communications Commission stating rules should be written to allow cable operators to require certification, notice and indemnity regarding indecent material from commercial program providers and Public, Education and Government programming on a separate channel, and block the channel unless a subscriber request it in writing. Many access operators have said they have a problem with turning over editorial control to the control operator and that this endangers the principle of public access (Flint, 1992c).

# Chapter III

## Methodology

With the passage of the 1992 Cable Act, one of the nation's largest mediums began reconstruction. One reason for the Cable Act was to protect the consumer. Previously, the consumer had little influence regarding programming access, cable rates, indecency, and customer service standards.

With the passing of the Cable Act, 13 areas in cable were affected, including, retransmission consent/must carry, indecency, home wiring, sports migration, rate regulation, anti-buy through, program access, customer service standards, ownership limits, carriage agreements, equal employment opportunity, electronic equipment compatibility, home shopping public-interest study, and direct broadcast satellite interest. A user fee to help the Federal Communications Commission pay for the implementation of the rules was created as a direct result of the 1992 Cable Act.

This study will focus on those areas that will have the most influence and effect on the consumer and the cable operator. These areas are retransmission consent/must carry and rate regulation.

In order to understand the 1992 Cable Act, this paper will evaluate the Clarksville, Tennessee, cable operation owned by Multiple System Operator Charter Communications.

The Ashland City, Tennessee, cable system, with a subscriber base of 3,000, is considered part of the Clarksville system and will also fall under this study. The Clarksville system has a subscriber base of 30,000.

This study will examine the Clarksville cable system, and the impact of rate regulation and retransmission consent/must carry. The cable industry employes a significant number of people across the country, and there were concerns jobs would be lost as a result of potential revenue losses by the cable industry.

**Questions/Procedures**

This paper will formulate a number of questions directed toward management of the Clarksville system. Inquiries will ask management of the Clarksville system to evaluate how the Cable Act influenced potential revenue growth; how it changed day-to-day operations; what type of cost measurements and constraints were encountered; and what procedures were followed in implementing the Cable Act's rules. Stages of the study will include a discussion with Clarksville's management and their analysis of the Cable Act.

The second stage will focus on those areas of the Cable Act that have had the biggest impact on the cable operator and the consumer, specifically rate regulation and retransmission consent/must carry.

The final stage takes a look at the direction the cable industry is headed, and whether the 1992 Cable Act will indeed lead to further regulations after additional technology is created and additional economic structures are developed.

**Research Questions/Area**

This study will take an objective view of the cable and broadcast industry and the influence of the 1992 Cable Act. Three research questions have been identified to help direct this study.

The research questions include: Did the 1992 Cable Act improve the quality for the cable consumer? Did the act provide economic security for the cable industry?, and Did the Federal Communications Commission and Congress take the correct measures aimed at restructuring the cable industry?

# CHAPTER IV

In discussion of rate rollbacks, and retransmission consent/must carry, the following chapters will refer to Charter Communication's cable operator in Clarksville as Clarksville. This will help distinguish between the local cable operator and references to multiple system operators such as Charter Communications.

There were several categories that interacted within the cable rate rollbacks. Because these categories were basically placed into one domain, it is difficult to isolate the exact amount of cash flow loss Clarksville endured when the rate rollbacks went into effect.

Cable rate reductions affected a basket of cable services including basic cable service, equipment cost, and installation charges. These three areas were allowed to be combined, and there was an overall reduction of 10% in those categories. Another area affected by the cable rate rollback was local franchise fees.

Before the 1992 Cable Act, franchise fees were not itemized; they were included in all retail cable rates. When Clarksville paid 5% of its revenue to local franchise fees when it was reducing revenue in those categories by 10%, it was allowed to itemize the applicable franchise fee for its service. The 10% revenue rollback was a significant cash flow loss considering those three areas account for 90% of Clarksville's total revenue base. But when Clarksville was allowed to itemize the franchise fee, it made cash loss in those areas easier to handle.

Clarksville, like other cable operators, created an itemized line on every cable bill representing the percentage of franchise fees they were paying to the community. Home Box Office in Clarksville is $10.95 per month.

Clarksville did not reduce Home Box Office by 5%; it assessed a 5% charge against a charge of $10.50 for the first time where before the franchise fees were built into the $10.50. In effect there was a 5% rate increase on premium services such as Home Box Office, and the 5% was charged separately from the 10% reduction in overall cable rates. Home Box Office was $10.50 before it was increased by 45 cents in March of 1997.

This cable rate adjustment became confusing for the consumers. The press reported there was a 10% reduction in cable rates, but in reality revenue was to be decreased in basic cable services, equipment cost, and installation charge, and then the cable operator was allowed to show the franchise fee separately for the first time.

**Equipment Cost Reduction**

Before the 1992 Cable Act, consumers were never charged for a converter box. The philosophy of cable operators was the more converter boxes in the home the better. Having a converter box in the home meant the consumer was in a position to have a service change without having a service technician come to the home. With a converter box, a consumer can order pay-per-view events, or add premium channels. Cable operators traditionally never charged for a converter box in the home because they did not want a service charge to become an obstacle for placing cable in a home.

But once the converter box was in the home, cable operators could then charge a fee for use of a remote control. Often times the fee for a remote control was much more than the actual worth of a remote control. One change within the cable rate rollback was a reduction in the fee placed on remote controls. Remote controls cost $7, and in Clarksville the cost for a remote control to the consumer was $3.50 a month.

Under the Cable Act, cable operators had to allocate the cost of a remote control to what the remote control was worth. It did not make sense to place a $115 converter box in a home and not charge anything, then place a $7 remote control in the home and charge $3.50 per month. The Federal Communications Commission would allow a cable operator to get a fair return on equipment cost, but not at the cost of overcharging the consumer. Using a formula developed by the Federal Communications Commission that included the average usable life of a remote control, in addition to other factors, the cost of rental for a remote control in Clarksville went from $3.50 a month to 20 cents a month.

A formula was also used to determine the average installation cost. Factors determining installation charge included the cost of material, labor, administrative cost, and any other categorical overhead that was part of cable operations.

However, installation charges were not affected by cable rate rollbacks since cable operators did not want installation charges to be an obstacle to placing a converter box in a consumer's home. Clarksville offers a number of installation discounts as an incentive to increase subscriber base.

The cable rate reduction dealt with basic cable service, equipment cost, and installation charge. Formulas were developed by the Federal Communications Commission to establish responsible rates for all three services with a benchmark formula dictating cable rates for basic cable service. This benchmark formula was so difficult to implement that local cable operators did not deal with the formula. Charter Communications' corporate headquarters in St. Louis, Mo., worked with implementing the benchmark formulas for all its operators including Clarksville.

The main reason corporate headquarters handled the benchmark formulas was financial. Because of the difficult and confusing components, most major operators created a regulatory department that included Certified Public Accountants and lawyers.

These regulatory departments dealt with the many complexities of the benchmark formula. Clarksvile fed data from its system to the corporate's regulatory department. Using spread sheets to help execute the benchmark formula, the regulatory department would determine what Clarksville could charge for basic cable rates. The regulatory department returned the new rates and data back to Clarksville with an explanation of how these numbers were reached, and Clarksville then verified the numbers provided by confirming the data it provided.

Although Clarksville and Ashland City are considered one market, Ashland City has a different cable channel lineup. Retransmission Consent and Must Carry rules that were reached applied to both, but with cable rate reductions there was a difference in the final reduction totals. As with Clarksville, the factors that affected Ashland City's cable rate reduction included the number of channels on its basic cable lineup and cost of programming.

The benchmark formula could also allow a cable operator to increase rates if their current rate structure fell below the benchmark formula. Operators were required to drop its overall revenue in the three categories by 10%, but if, for example two cable operators were offering the same amount of channels with one charging higher rates than the other operator, the second operator would be allowed to increase its rates to fall in line with the first operator while the first operator would have to decrease its rates to the benchmark rate if needed.

Although Clarksville did not know the exact amount of cash flow lost from the rate rollbacks, it was obvious there was some cash flow loss, especially with cash flow loss from equipment charges. But was the cash flow enough to force Clarksville to cut back on employees?

While Clarksville was complying with the Cable Act's ruling there was never a time it had to make any staff reductions. Nor was there a hiring freeze in 1993, the year the Cable Act was being implemented.

Other repercussions to come from the Cable Act included additional information listed on the consumer's monthly bill. This included listing the local government authority with a contact at the local level and an address and phone number. This provided the consumer an outlet to contact a local official if they had a complaint against a local cable operator.

After the second wave of rate reductions, the Federal Communications Commission changed certain rules on how a cable operator could increase rates. One way to justify a rate increase was to add cable channels. There was a concern from the Federal Communications Commission that cable operators were not adding channels. To help operators add to their cable lineup, the Federal Communications Commission developed a grid that basically said if an operator had a certain number of channels on its system, it could charge a certain amount of money per channel, per customer, per month.

**Advantages of Local Government Involvement**

A cable operator did not have to comply with any rules if the local government was not regulated. Local government can regulate basic cable service, equipment cost, installation charges, customer service standards, and technical equipment. The Federal Communications Commission regulates expanded services based on a rate complaint process.

If a local cable operator never complied with the guidelines, and the local government decided to become a regulatory authority, the cable operator would then have to roll back its rates and offer refunds for the time period it opted not to comply with the guidelines. The cable operator would have to submit certain documents including their financial structure, and their cable rates, and compare those rate with the maximum that would be allowed by the Federal Communications Commission. If there was a difference in the two, the cable operator and local government would have to determine how much above a certain level the rates were, determine how long these rates have been at this level, and then credit back to the start of regulations. There was a danger in cable operators not complying with the rate regulations because it could potentially cost the cable operator thousands of dollars. Because of this scenario, most companies voluntarily complied with the rate rollbacks. Clarksville voluntarily complied with the rate rollbacks and as a result did not have to return money to its subscribers.

Cable rate regulations went into effect in September of 1993, and in one cable bill, customers could immediately see the overall rate reduction in basic service, equipment cost, and installation. At the same time consumers saw additional information on their bill that included the itemized franchise fee, the Federal Communications Commission's address and phone numbers and information pertaining to the local franchise authority including address, contact person, and phone number.

**User Fee Cost Waived To The Consumer**

The user fee allowed the Federal Communications Commission to pay for the implementation of the Cable Act by charging each cable operator a fee based on a cable operators subscriber base. The initial amount of the user fee was 49 cents per customer per year. Clarksville has a subscriber base of 30,000. The Federal Communications Commission knew there would be debate with local operators so the Federal Communications Commission allowed the cost to be passed to the consumer. Clarksville pays its user fee in August and from August through the following September collects in equal increments four cents per customer over 11 months and five cents per customer during one month.

**Customer Service Standing By**

During the period the Cable Act was being debated and implemented, management on the local level, including Clarksville, worked closely with its customer service staff. Clarksville gave all of its customer service staff new rate sheets and gave them scripts to help in explaining all the changes to the customers. There were a number of different issues taking place all at once, including cable rate regulations and retransmission/must carry consent. Clarksville made every effort to keep its customer service staff aware of the continuing changes so it could correctly relay that information to the subscriber base. The big issue with the customer service staff evolved around retransmission/must carry consent. The subscriber was informed there would be a 10% reduction in cable rates, but at the same time knew there was a possibility some broadcast channels could be dropped from the cable lineup.

**Must Carry/Retransmission Consent**

CBS was the broadcast network that created the idea of cable operators paying cash to carry its network signal. CBS persuaded congress to add this concept to the Cable Act and from that was born retransmission consent/must carry. The law required cable operators to negotiate with any area broadcast channel within the area of dominant influence to carry its signal and establish a cash-for-carry agreement. The broadcast channel also had the option of must carry where the broadcaster did not want to negotiate for cash payments to carry its signal, it simply wanted to make sure the signal would be carried by the cable operator.

These two options did not allow a cable operator to have any leverage. The operator either negotiated an agreement up to, and including cash payments, or they were forced to carry the broadcast channel if the broadcast station opted for must carry.

If a broadcast channel opted for retransmission consent and took a cash-for-carry stance, there would be the strong probability the cable operator would either cut off negotiations or not negotiate at all if they had a no-cash clause.

If a broadcast channel was dropped from a cable lineup, the cable operator would have to provide A/B switches for its customers to retrieve the broadcast channel's signal.

**The Impact Of A/B Switches**

Charter Communications purchased several thousand A/B switches company wide. Each local system was distributed a certain amount in case an agreement over retransmission consent between broadcast channels and local cable operators could not be reached. Clarksville received several thousand A/B switches just in case it had to drop a broadcast network affiliate, or independent broadcast channel. The A/B switches were available if customers wanted to purchase them at cost to receive the off-air channels.

Although there was a concern one or two broadcast channels would be dropped from Clarksville's basic tier during negotiations in the last part of 1996, the A/B switches still remain in Clarksville's warehouse. Clarksville met a three-year contractual agreement with each of the broadcast affiliates out of Nashville and never needed the A/B switches.

None of the broadcast channels in the Nashville market was adamant about a cash for carriage agreement. Despite the growth of cable networks, ABC, NBC, CBS and FOX dominate television and cable ratings and have the larger viewing audiences. It was important for a cable operator to carry all four of the broadcast giants because it added value to the cable operator's lineup. And it was also important for broadcast affiliates to be carried by a cable operator to continue reaching those audiences. Rather than becoming adversaries, Clarksville and the broadcast network affiliates in Nashville became partners, and for the first time really developed a close working relationship.

Clarksville signed a three-year contract with the broadcast channels in 1994. In 1997 Clarksville renegotiated the contracts with very little change from the original agreements. None of the channels opted to go back to a cash-for-carry agreement. Part of the agreements that solidified the relationships was the broadcast channels opportunity to run cross promotional spots on cable network channels for their news and network programming.

One of Clarksville's more difficult negotiation situations with a broadcast network channel the first time around was with CBS Nashville affiliate WTVF.

WTVF is owned by Landmark, which also owns The Weather

Channel and The Travel Channel. A partnership already existed with Landmark before the issue of retransmission consent was born from the 1992 Cable Act. This already existing partnership solidified Clarksville's position in negotiation with WTVF over retransmission consent. In addition to Clarksville, Landmark also had a long established partnership with Charter Communications. This partnership helped local operators in other markets with negotiations with Landmark owned broadcast channels. Landmark wanted its product - The Weather Channel - to remain in the homes of cable subscribers, and cable operators that carried both The Weather Channel and The Travel Channel.

Clarksville's bond with Landmark was strong enough that demands Clarksville found unreasonable in retransmission consent negotiation with WTVF, allowed them to have an advantage in negotiations. Landmark would never allow one of its broadcast channels to be dropped from a system.

An example of successful retransmission negotiations is the Fox Network. Fox reached an agreement where all of Charter Communications was covered under the agreement. This agreement covered all of Charter's local cable operations and kept the FOX broadcast network on all of the Charter systems. The agreement was FOX would release its new cable channel FX, and FX would reach a certain number of homes in a certain amount of time. Charter Communications met the requirement which allowed all systems to carry the FOX broadcast channel regardless of whether the local cable operator added FX or not. Clarksville does not carry FX.

Charter Communications's corporate office allowed its local operators to negotiate their own retransmission consent agreements. The corporate office became involved only if its local operators needed advice, or had a legal issue that needed the expertise of Charter Communications' corporate lawyers. If a broadcast channel was demanding something that would not be possible, local cable operators would consult with corporate to find a reasonable conclusion.

**From Must Carry, WKAG Joins Charter Lineup**

WKAG in Hopkinsville, Kentucky, was added to Clarksville's cable tier lineup in January of 1994 after it met certain technical requirements that made it eligible for must carry. The most important requirement met was the quality and strength of WKAG's broadcast signal including purchasing equipment to meet signal requirements and installing the equipment. WKAG's proximity to Clarksville also worked in its favor. WKAG, an independent low power broadcast channel, had a slightly more difficult time achieving must carry status than a full power network affiliate. A network affiliate has a bigger budget to reach mandatory technical requirements, and typically has signal strength to reach a larger area.

As a result of must carry and retransmission consent, WKAG, WNAB and WPGD were added to Clarksville's basic service tier. WNAB is the broadcast affiliate of Warner Brothers, and WPEG is an independent broadcast channel that carries Trinity Broadcasting programming.

According to Federal Communications Commission rules, one third of the channels a cable operator can provide must be reserved for broadcast channels. If a cable operator has a 60 channel system, the operator would be required to carry up to 20 broadcast channels.

Clarksville carries ten broadcast channels including WKAG, and the PBS channel out of Nashville. All are positioned in Clarksville's basic service tier as required by the Cable Act. Prior to the Cable Act, it did not matter where a channel was positioned in a cable operator's cable lineup. There are 15 channels offered in Clarksville's basic tier service. This includes nine broadcast channels, QVC, a home shopping network, a local community programming channel, the Prevue and Sneak Prevue Channels, and cable superstations WTBS and WGN, an independent broadcast channel, carried by several cable operators across the nation.

When the Cable Act required broadcast channels to be located within the basic service tiers it forced cable operators to rearrange their cable lineup. However, Clarksville had anticipated this positioning of channels would be required by the Cable Act before anything became law, and had already positioned these channels within the basic cable service. Clarksville did not want to deal with the adjustment of channel placements, while administering rate changes, itemized bills, and the other areas of the Cable Act.

**Supreme Court Rules On Must Carry**

As a closing chapter to the 1992 Cable Act, cable operators had argued must carry was unconstitutional. Cable operators argued it was not legal to force them to carry a product that may or may not have or add value to its product. Cable operators wanted must carry overturned because it would allow them to potentially drop broadcast channels they deemed unnecessary or lacking in quality, and in turn add a cable network that would increase value to its product. In some markets, there are duplicate signals from the same network source. These duplicate channels, along with Public Broadcasting channels, would be the broadcast channels most affected if the Supreme Court overturned must carry. It was the general consensus among the cable industry leaders that must carry would be overturned.

It was also estimated that as many as 500 broadcast channels nationwide would stand a chance of being dropped by cable operators if must carry was overturned (McClellan, 1997b).

At the same time cable operators were anxious about the Supreme Court overturning must-carry, the operators also were bracing themselves for the phone calls from customers upset about a channel being dropped. However, the majority of the industry considered upset customers as secondary to having a product they did not want dropped from their cable lineup. In markets where a duplicate signal was being picked up, there was the possibility the broadcast channel outside the Area of Dominant Influence would be the one to survive, while the station inside the Area of Dominant Influence would be dropped. This resulted in stations outside the Area of Dominant Influence having higher ratings and large viewing audiences (McClellen, 1994b).

On March 31, 1997, almost five years after the Cable Act was implemented, the Supreme Court in a 5-4 decision upheld must carry, surprising cable industry leaders who were confident the Supreme Court would rule just the opposite. The Supreme Court ruled the government could force cable systems to carry local broadcast channels. The ruling rejected cable operators' arguments that must carry violates their free speech rights by forcing them to carry stations they would prefer to drop if that station did not have any redeeming qualities. The Supreme Court said the measure is a lawful effort to preserve broadcast television and ensure public access to information from a variety of sources (1997, April 1. The Leaf-Chronicle, p. A5).

Despite the ruling by the Supreme Court, Clarksville had no intentions of dropping WKAG from its cable lineup. WKAG had proven it was adding a redeeming quality to Clarksville's cable lineup with its news and sports coverage of the Clarksville area. Keeping WKAG on its cable lineup was also a political move for Clarksville and Charter Communications. Charter Communications is the sole cable provider in Hopkinsville and, as of April, 1997, was in the middle of franchise negotiations with the government of Hopkinsville. Dropping WKAG from its cable lineup in Clarksville would have been a costly maneuver in remaining Hopkinsville's only cable provider.

# CHAPTER V

## Conclusion and Evaluations

During the early debate surrounding the 1992 Cable Act, Charter Communications and its cable system in Clarksville was focused on why the cable industry was falling under regulations. Charter Communications and other cable operators could increase cable rates, and in their minds, justify these rate increases. What the industry did not do properly was indicate to the consumer why a particular rate increase was needed. And in some cases, the consumer was never told in advance there would be a rate increase.

It is important to realize cable operators will need to increase cable rates to stay in flow with inflation rates, cost of work expenses, and when cable channels are added to a cable operator's lineup. When there is a justified cable rate increase, it is essential cable operators already have in place a developed loyalty with their customers to avoid potential blacklash.

After the first rate reduction went into effect, the Federal Communications Commission wanted to find a way to entice and encourage the cable operator to add to its product line. There had been a cut in cash flow so it was only logical some cable operators would have been hesitant and apprehensive about a financial obligation involving expansion of a service.

Prior to the Cable Act, cable operators would add one channel per year and at that time increase their cable rates. Typically the channel added was of no cost to the cable operator, and did not have much value to the consumer.

Despite the cable rate rollbacks, the Federal Communications Commission persuaded cable operators to add channels by building certain incentives that included rate increases within the correct boundaries. At the same time Clarksville, and other cable operators, were losing cash flow they began adding channels to their lineup at a pace never seen before. The consumer benefitted from the Cable Act when the product they brought into their home began increasing in value.

Since November of 1993, Clarksville has added 24 cable and broadcast networks. Five channels alone were added in January of 1994, five were added in March of 1995, and five were added in April of 1996.

Broadcast channels WNAB and WPGD were added to Clarksville's lineup as a result of meeting must carry standards. Clarksville's basic tier includes 15 channels, including 10 broadcast channels. The expanded service includes a total of 49 channels, and this does not include optional premium channels such as Cinemax, Home Box Office, The Disney Channel, Showtime, and Pay Per View Channels.

The Cable Act accelerated the growth of the cable industry. Cable channels were born as a direct result of retransmission consent, and for the first time, cable operators added four, five or six cable channels at a time, rather than one a year. Many small independent channels have new life as a result of must carry with the ability to reach a much larger market, increase advertising dollars, and receive larger audience shares. Cable operators, despite the argument they are being forced to carry a product, will benefit from carrying the broadcast channels, particularly the small independent channels.

Clarksville will benefit from its new partnership with WKAG, especially in its franchise renewal negotiations with the government of Hopkinsville. WKAG's daily newscasts consistently cover stories in Clarksville and WKAG now has a satellite office in Clarksville. WKAG also covers Clarksville athletics, especially Austin Peay State University athletics. One noteworthy impact WKAG is now having is the battle for advertising dollars, not only with Charter Communications, but with The Leaf-Chronicle, and local radio stations. Charter Communications' advertising department vies directly with the sales staff with WKAG over advertising dollars.

By adding WKAG, in addition to 26 cable channels since 1992, Clarksville has established a loyalty with its customers. When a customer requests more for it's money, its crucial a business generate an attempt to attain that goal. Clarksville added to its product while abiding by the benchmark formula rate to make the product affordable to the customer, and at the same time help make a profit for itself. Clarksville and other cable operators had to make the initial investment to upgrade their plants so they could add new cable networks. That initial cost will be recovered especially if Clarksville and other cable operators grow their subscriber base and develop a customer loyalty.

The cash flow loss for Clarksville and other cable operators might have been significant at first. Although Clarksville does not know the exact amount of cash flow loss because rate reduction, installation, and equipment costs were all put in one category, it is not difficult to see there was some loss. The cost for basic cable service went from $14.95 in March of 1993 to $9.23 in September of 1993. Clarksville and Ashland City are considered the same market, but the cable channel lineup and costs are different. Ashland City does not offer the same amount of channels because of technical capabilities. The cost for basic cable service in Ashland City went from $14.95 in April of 1993 to $8.74 in September of 1993. Clarksville and Ashland City have a combined estimated of 30,000 customers, but fewer than 10% of that subscriber base have only basic cable service.

Clarksville and Ashland City increased rates for expanded cable service, but at the same time added several cable channels making the rate increase legitimate. Cost for expanded service in Clarksville was $10.90 per month in March of 1993, but jumped to $15.38 in September of 1993. Although there were no cable channels added during the period between March and September, there were six channels added in 1994.

Clarksville's rates stayed consistent until April of 1995 when cost for expanded service jumped to $17.63. Clarksville added six cable channels in March of 1994 including The Learning Channel, Court TV, Comedy Central, Home and Garden Television, and Playboy, a pay-per-view channel. Since April of 1994, Clarksville has had three rate increases. Clarksville increased rates to $18.10 per month in October of 1995 when it added Univision, a Spanish channel. Rates increased again in June of 1996 to $19.16, but Clarksville added nine channels in January, March and April of 1996. Channels added included HBO2, HBO3, Showtime2, WPGD, an independent broadcast channel, ESPN2, The History Channel, Turner Classic Movies, The Cartoon Network and WNAB, a broadcast channel. Another channel, TV Land, was added in October of 1996. Clarksville's last rate increase came in March of 1997 when rates jumped to $19.96.

Ashland City did not have a rate increase until April of 1995 when rates went from $14.29 to $15.24. Two other rate increases followed with a increase in March of 1996 to $16.21 and a increase to $16.48 in March of 1997. Nine channels have been added since September of 1995 including WPGD and WNAB, both broadcast channels.

The consumer also benefitted from cable rate rollbacks through the decrease in equipment charge. The $3.50 per month for a remote control was a nice revenue stream for a local cable operator, and the cable operator benefitted because the margins were good and the payback was quick. After a couple of months a cable operator would have its investment in the remote controls covered, and all additional revenue would be a steady revenue stream.

In September of 1993 consumers saw the cost for remotes drop from $3.50 a month to ten cents a month. Clarksville had never charged for a converter box because it did not want any obstacle obscuring the placement of its product in the home. However, the Federal Communications Commission understood the cost expenditures Clarksville and other cable operators were paying towards equipment cost, and it allowed these operators to begin charging for converter boxes. Clarksville charges $1.30 per month to place a converter box in the home, but there is no charge if a consumer wants more than one converter box in the home.

Despite the new charge of $1.50 per month, subscribers in Clarksville benefitted from the Cable Act improving the quality of cable coming into their home. The cost of a remote control went from $3.50 to ten cents, a savings of $3.40 per month or $40.80 over 12 months for one customer.

It should also be noted Clarksville has had to compensate for additional cash flow expenditures through pole rental to the Clarksville Department of Electricity and Cumberland Electric Membership Corporation, and Clarksville has watched its poll rental increase since 1983. Municipal electric utilities and rural electric companies have to use federal formulas to comply with pole rental issues, but private for-profit companies do not have to comply with federal law regarding the rates on pole attachment. The Clarksville area cable operations has the highest pole rental rates among the 16 states Charter Communications has cable operations.

During the Cable Act's implementation into daily cable operations, Clarksville remained in continuous contact with the local franchise government in Clarksville through personal meetings, letters, and phone calls. With all of the confusion surrounding the Cable Act, especially in the area of cable rate regulation and retransmission consent/must carry, Clarksville was careful to tell the local franchise government what events were taking place and why Clarksville had to implement or follow certain standards.

The 1992 Cable Act was passed for the consumer, and the consumer has benefitted from reduced rates in equipment charges, regulated rate increases and increases in the amount of cable channels brought into their home. Through retransmission consent, and the Supreme Court upholding the must carry law, the consumer will not have to worry about needing an antenna to pick up broadcast channel signals. There's also be an improvement in customer service standards, and an itemized statement. There is also better communication between the cable operator and the customer.

The Cable Act requires notification from the cable operator to the consumer regarding any changes to the cable product coming into the home. Customers are notified in advance of all rate changes, and any services that may be added or dropped. The Cable Act made the cable industry realize the importance of communicating with its customers and building loyalty.

Despite the ruling of the Supreme Court there is a strong contingency of cable operators who view must carry as unconstitutional. Cable operators argue a business should not be told what kind of information they are going to place on a cable lineup and distributed to the customer, and whether or not that product add value to the customer's cable lineup. The ruling probably saved the economic lives of independent broadcast channels around the country, but it was highly unlikely Clarksville would have dropped WKAG from its cable lineup.

With the passing of the 1996 Telecommunications Act cable operators now have a new competitor - the telephone industry. The telephone industry can now become a cable provider. It's difficult to distinguish if telephone operators have the capital to spend on installing cable, but what could happen is telephone companies purchasing cable operators. With this new competitor, it becomes increasingly important for the cable operator to evaluate its current position and look at areas it needs to grow. The Cable Act proved to be quite unpopular among cable leaders, but in fact it forced the cable industry to grow, and examine what needs to be done to stay competitive. It has become increasingly more important to build customer loyalty and find ways to satisfy the customers.

One new frontier for the cable industry is the Internet. With fiber optics and coaxial, cable operators already have the medium to become an Internet provider, and information can be downloaded quicker on fiber optics or coaxial than a regular telephone line.

Charter Communications is currently testing Internet access through fiber optics and coaxial in the California market. The big issue facing the cable industry is the cost of equipment. Currently a cable modem for the Internet costs $500. The price of equipment will have to decrease before cable operators can become Internet providers on a large scale. It's expected cable operators will become Internet providers in larger markets before moving into the smaller markets. It's uncertain how long it will be before Clarksville will become an Internet provider, but with the competition of the telephone industry, improvements in technology, and the importance of customer loyalty, it is certain Clarksville and other cable operators will not wait for the government to tell them to when to incorporate this new technology and increase the value of their product to their customers.

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APPENDIXES

# APPENDIX A

CLARKSVILLE/MONTGOMERY, TENNESSEE — FRANCHISE AREA 1,2,3,4,&5

| | MAR 1997 | JUNE 1996 | OCT 1995 | APR 1995 | MAR 1994 | SEPT 1993 | MAR 1993 | JAN 1992 | JAN 1991 | MAR 1990 |
|---|---|---|---|---|---|---|---|---|---|---|
| BASIC SERVICE TIER | 10.70 | 9.75 | 9.23 | 9.23 | 9.23 | 9.23 | 14.95 | 9.95 | 9.95 | |
| EXPANDED SERVICE | 19.96 | 19.16 | 18.10 | 17.63 | 15.38 | 15.38 | 10.90 | 14.05 | 12.00 | 19.95 |
| ADDITIONAL OUTLET | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 3.00 | 3.00 | 3.00 | 3.00 |
| REMOTE | 0.10 | 0.10 | 0.10 | 0.10 | 0.10 | 0.10 | 3.50 | 3.00 | 3.00 | 3.00 |
| ADDRESSABLE CONVERTER | 1.30 | 1.30 | 1.30 | 1.30 | 1.30 | 1.30 | 0.00 | 0.00 | 0.00 | 0.00 |
| TUNING CONVERTER (NONADDR) | 0.66 | 0.66 | 0.66 | 0.66 | 0.66 | 0.66 | 0.00 | 0.00 | 0.00 | 0.00 |
| PREMIUM PAK | 17.25 | 16.50 | 16.50 | 16.50 | 16.50 | 16.50 | 16.50 | N/A | N/A | N/A |
| PREMIUM PLUS | 24.00 | 24.00 | 24.00 | 24.00 | 24.00 | 24.00 | 24.00 | N/A | N/A | N/A |
| PREMIUM VIP | 34.00 | 34.00 | 34.00 | 34.00 | 34.00 | 34.00 | 34.00 | N/A | N/A | N/A |
| HBO | 10.95 | 10.50 | 10.50 | 10.50 | 10.50 | 10.50 | 10.50 | 10.50 | 10.50 | 10.00 |
| SHOWTIME | 10.95 | 10.50 | 10.50 | 10.50 | 10.50 | 10.50 | 10.50 | 10.50 | 10.50 | 10.00 |
| CINEMAX | 10.50 | 10.50 | 10.50 | 10.50 | 10.50 | 10.50 | 10.50 | 10.50 | 10.50 | 10.00 |
| DISNEY | 7.95 | 7.95 | 7.95 | 7.95 | 7.95 | 7.95 | 7.95 | 7.95 | 7.95 | 7.95 |
| DMX | 9.95 | 9.95 | 9.95 | 9.95 | 9.95 | 9.95 | 12.95 | N/A | N/A | N/A |
| PAY-PER-VIEW MOVIES | 3.95 | 3.95 | 3.95 | 3.95 | 3.95 | 3.95 | 3.95 | 4.95 | 4.95 | 4.95 |
| CABLE SAFEGUARD | 0.95 | 0.95 | 0.95 | 0.95 | 0.95 | N/A | N/A | N/A | N/A | N/A |
| THE CABLE GUIDE | 8/96 2.50 | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| STANDARD INSTALLATION | 35.00 | 35.00 | 35.00 | 35.00 | 35.00 | 35.00 | 49.95 | 49.95 | | |
| RECONNECT | 24.67 | 24.67 | 24.67 | 24.67 | 24.67 | 24.67 | 49.95 | 49.95 | | |
| A/O INSTALL @ TIME OF INITIAL INSTALL | 10.67 | 10.67 | 10.67 | 10.67 | 10.67 | 10.67 | 0.00 | 0.00 | 10.00 | 10.00 |
| A/O INSTALL @ AFTER INITIAL INSTALL | 23.67 | 23.67 | 23.67 | 23.67 | 23.67 | 23.67 | 20.00 | 20.00 | 20.00 | |
| OUTLET RELOCATION | 23.67 | 23.67 | 23.67 | 23.67 | 23.67 | 23.67 | 20.00 | 20.00 | 20.00 | |
| STANDARD VCR INSTALL | 18.67 | 18.67 | 18.67 | 18.67 | 18.67 | 18.67 | 20.00 | 0.00 | | |
| CUSTOM VCR INSTALL | 23.67 | 23.67 | 23.67 | 23.67 | 23.67 | 23.67 | 20.00 | 0.00 | | |
| A/B SWITCH KIT/INSTALL | 18.67 | 18.67 | 18.67 | 18.67 | 18.67 | 18.67 | 20.00 | 0.00 | | |
| A/B SWITCH KIT | 4.00 | 4.00 | 4.00 | 4.00 | 4.00 | 4.00 | 0.00 | N/A | N/A | N/A |
| NON PAY RECONNECT | 24.67 | 24.67 | 24.67 | 24.67 | 24.67 | 24.67 | 49.95 | 39.95 | | |
| A/O RECONNECT | 23.67 | 23.67 | 23.67 | 23.67 | 23.67 | 23.67 | 20.00 | 20.00 | | |
| CHANGE OF SERVICE OR UPGRADE | 10.00 | 10.00 | 10.00 | 10.00 | 10.00 | 10.00 | 10.00 | 10.00 | 10.00 | |
| PROCESSING FEE | 7.75 | 7.75 | 7.75 | 7.75 | 3/94 7.75 | 7.50 | 7.50 | 7.50 | 5.00 | 5.00 |
| HOURLY SERVICE CHARGE | 20.00 | 20.00 | 20.00 | 20.00 | 20.00 | N/A | N/A | N/A | N/A | N/A |
| COMMERCIAL INSTALL 1ST HR | 49.95 | 49.95 | 49.95 | 49.95 | 49.95 | 49.95 | 49.95 | 49.95 | | |
| EACH ADDITIONAL HOUR | 15.00 | 15.00 | 15.00 | 15.00 | 15.00 | 15.00 | 15.00 | 15.00 | | |
| COMMERCIAL BASIC | 33.85 | 33.85 | 33.85 | 33.85 | 33.85 | 33.85 | 33.85 | 29.95 | | |
| COMMERCIAL DMX INSTALLATION | 49.95 | 49.95 | 49.95 | 49.95 | 49.95 | 49.95 | 49.95 | 49.95 | | |
| COMMERCIAL DMX | 50.00 | 50.00 | 50.00 | 50.00 | 50.00 | 50.00 | 50.00 | 50.00 | | |

# APPENDIX B

## ASHLAND CITY/CHEATHAM COUNTY, TENNESSEE — FRANCHISE 7 & 8

| | MAR 1997 | MAY 1996 | APR 1995 | MAR 1994 | SEPT 1993 | APR 1993 | JAN 1992 | JAN 1991 | APR 1990 |
|---|---|---|---|---|---|---|---|---|---|
| BASIC SERVICE TIER | 10.70 | 9.22 | 8.74 | 8.74 | 8.74 | 14.95 | 9.95 | N/A | N/A |
| EXPANDED SERVICE | 16.48 | 16.21 | 15.24 | 14.29 | 14.29 | 8.70 | 11.85 | 19.75 | 17.75 |
| ADDITIONAL OUTLET | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 3.50 | 4.60 | 4.60 | 4.60 |
| REMOTE | 0.10 | 0.10 | 0.10 | 0.10 | 0.10 | 3.50 | 3.00 | 3.00 | 3.00 |
| TUNING CONVERTER (NONADDR) | 0.66 | 0.66 | 0.66 | 0.66 | 0.66 | 0.00 | 0.00 | 0.00 | 0.00 |
| PREMIUM PAK | 17.25 | 16.50 | 16.50 | 16.50 | 16.50 | 18.70 | N/A | N/A | N/A |
| PREMIUM PLUS | 24.00 | 24.00 | 24.00 | 24.00 | 24.00 | 26.20 | N/A | N/A | N/A |
| PREMIUM VIP | N/A | N/A | N/A | N/A | 34.00 | 36.20 | N/A | N/A | N/A |
| HBO | 10.95 | 10.50 | 10.50 | 10.50 | 10.50 | 10.00 | 10.00 | 10.00 | 9.50 |
| SHOWTIME | 10.95 | 10.50 | 10.50 | 10.50 | 10.50 | 10.00 | 10.00 | 10.00 | 9.50 |
| THE MOVIE CHANNEL | N/A | N/A | N/A | N/A | 10.50 | 10.00 | 10.00 | 10.00 | 9.50 |
| DISNEY | 7.95 | 7.95 | 7.95 | 7.95 | 7.95 | 7.95 | 7.95 | 7.95 | 7.95 |
| CABLE SAFEGUARD | 0.95 | 0.95 | 0.95 | 0.95 | 0.95 | N/A | N/A | N/A | N/A |
| THE CABLE GUIDE | 8/96 2.00 | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| STANDARD INSTALLATION | 35.00 | 35.00 | 35.00 | 35.00 | 35.00 | 49.95 | 39.95 | | |
| RECONNECT | 24.67 | 24.67 | 24.67 | 24.67 | 24.67 | 49.95 | 39.95 | | |
| A/O INSTALL @ TIME OF INITIAL INSTALL | 10.67 | 10.67 | 10.67 | 10.67 | 10.67 | 0.00 | 0.00 | 0.00 | |
| A/O INSTALL @ AFTER INITIAL INSTALL | 23.67 | 23.67 | 23.67 | 23.67 | 23.67 | 20.00 | 20.00 | 20.00 | 20.00 |
| OUTLET RELOCATION | 23.67 | 23.67 | 23.67 | 23.67 | 23.67 | 20.00 | 20.00 | 20.00 | 20.00 |
| STANDARD VCR INSTALL | 18.67 | 18.67 | 18.67 | 18.67 | 18.67 | 20.00 | | | |
| CUSTOM VCR INSTALL | 23.67 | 23.67 | 23.67 | 23.67 | 23.67 | 20.00 | | | |
| A/B SWITCH KIT/INSTALL | 18.67 | 18.67 | 18.67 | 18.67 | 18.67 | 20.00 | 0.00 | | |
| A/B SWITCH KIT | 4.00 | 4.00 | 4.00 | 4.00 | 4.00 | 0.00 | 0.00 | | |
| NON PAY RECONNECT | 24.67 | 24.67 | 24.67 | 24.67 | 24.67 | 49.95 | 39.95 | | |
| A/O RECONNECT | 23.67 | 23.67 | 23.67 | 23.67 | 23.67 | 20.00 | 20.00 | 20.00 | |
| CHANGE OF SERVICE OR UPGRADE | 10.00 | 10.00 | 10.00 | 10.00 | 10.00 | 10.00 | 10.00 | 10.00 | |
| PROCESSING FEE | 7.75 | 7.75 | 7.75 | 3/94 7.75 | 7.50 | 7.50 | 7.50 | | |
| HOURLY SERVICE CHARGE | 20.00 | 20.00 | 20.00 | 20.00 | N/A | N/A | N/A | N/A | N/A |
| COMMERCIAL INSTALL 1ST HR | 49.95 | 49.95 | 49.95 | 49.95 | 49.95 | 49.95 | 49.95 | | |
| EACH ADDITIONAL HOUR | 15.00 | 15.00 | 15.00 | 15.00 | 15.00 | 15.00 | 15.00 | | |
| COMMERCIAL BASIC | 29.95 | 29.95 | 29.95 | 29.95 | 29.95 | 29.95 | 29.95 | | |

# APPENDIX C

# CLARKSVILLE CHANNEL LINEUP

TENNESSEE

## BASIC SERVICE TIER

2 *WKRN (ABC) - NASHVILLE*
3 *COMMUNITY PROGRAMMING*
4 *WSMV (NBC) - NASHVILLE*
5 *WTVF (CBS) - NASHVILLE*
6 *PREVUE GUIDE*
7 *TBS - (IND) - ATLANTA*
8 *WDCN (PBS) - NASHVILLE*
9 *WZTV (FOX) - NASHVILLE*
10 *QVC*
11 *WGN (IND) - CHICAGO*
12 *TV-43 (IND) - HOPKINSVILLE*
13 *WUXP (UPN) - NASHVILLE*
18 *WNAB (WB) - NASHVILLE*
19 *SNEAK PREVUE*
21 *WPGD (IND) - HENDERSONVILLE*

## EXPANDED SERVICE

24 *LIFETIME TELEVISION*
25 *MUSIC TELEVISION (MTV)*
26 *THE NASHVILLE NETWORK (TNN)*
27 *CNN HEADLINE NEWS*
28 *NICKELODEON*
29 *TURNER NETWORK TELEVISION (TNT)*
30 *VH-1*
31 *THE DISCOVERY CHANNEL*
32 *CABLE NEWS NETWORK (CNN)*
33 *BLACK ENTERTAINMENT TELEVISION (BET)*
34 *ARTS AND ENTERTAINMENT (A&E)*
35 *COUNTRY MUSIC TELEVISION (CMT)*
36 *CNBC*
37 *C-SPAN*
38 *SCI-FI*
39 *ESPN*
40 *AMERICAN MOVIE CLASSICS (AMC)*
41 *THE FAMILY CHANNEL*
42 *THE WEATHER CHANNEL*
43 *USA NETWORK*
44 *SPORTSOUTH*
45 *ODYSSEY (F & V)*
46 *THE LEARNING CHANNEL (TLC)*
47 *COURT TV*
48 *COMEDY CENTRAL*
49 *HOME AND GARDEN TELEVISION (HGTV)*
50 *UNIVISION*
51 *THE BUSINESS GALLERY*
52 *IT'S YOUR MOVE*
53 *ESPN2*
54 *THE HISTORY CHANNEL*
55 *TURNER CLASSIC MOVIES (TCM)*
56 *CARTOON NETWORK*
57 *TV LAND*

## OPTIONAL PREMIUM CHANNELS

14 *CINEMAX*
15 *VIEWER'S CHOICE-PPV*
16 *THE DISNEY CHANNEL*
20 *VIEWER'S CHOICE 2 - PPV (Freq. A-5)*
22 *VIEWER'S CHOICE 5 - PPV*
23 *VIEWER'S CHOICE 4 - PPV*
60 *PLAYBOY - PPV (Freq. A-4)*
63 *HBO (Freq. D)*
64 *HBO 2* (Freq. VV)
65 *HBO 3* (Freq. UU)
66 *SHOWTIME (Freq. A-1)*
67 *SHOWTIME 2 (Freq. A-1)*

## CHANNELS ADDED

Dec-89 *BET*
Jan-92 *THE DISCOVERY CHANNEL*
Nov-92 *ARTS & ENTERTAINMENT*
Nov-92 *CMT*
Nov-93 *SCI-FI*
Jan-94 *TV-43*
Jan-94 *REQUEST 5 - PPV*
Jan-94 *VIEWER'S CHOICE - PPV*
Aug-94 *REQUEST 4 - PPV*
Dec-94 *SPORTSOUTH*
Mar-95 *FAITH & VALUES 9/96 ODYSSEY*
Mar-95 *LEARNING CHANNEL*
Mar-95 *COURT TV*
Mar-95 *PLAYBOY - PPV*
Mar-95 *COMEDY CENTRAL*
Sep-95 *HOME AND GARDEN TELEVISION*
Oct-95 *UNIVISION*
Jan-96 *HBO 2*
Jan-96 *HBO 3*
Jan-96 *SHOWTIME 2*
Mar-96 *WPGD (IND)*
Apr-96 *ESPN2*
Apr-96 *THE HISTORY CHANNEL*
Apr-96 *TURNER CLASSIC MOVIES*
Apr-96 *CARTOON NETWORK*
Apr-96 *WNAB*
Oct-96 *TV LAND*
Mar-97 *VIEWER'S CHOICE 2*

# APPENDIX D

TENNESSEE

# ASHLAND CITY-CHEATHAM COUNTY CHANNEL LINEUP

## BASIC SERVICE TIER

2 *WKRN (ABC) - NASHVILLE*
3 *VIDEO MARKET PLACE*
4 *WSMV (NBC) - NASHVILLE*
5 *WTVF (CBS) - NASHVILLE*
6 *WPGD (IND) - HENDERSONVILLE*
7 *TBS (IND) - ATLANTA*
8 *WDCN (PBS) - NASHVILLE*
9 *WZTV (FOX) - NASHVILLE*
10 *QVC*
11 *WGN (IND) -CHICAGO*
12 *WNAB (WARNER BROS.) - NASHVILLE*
13 *WUXP (UPN) - NASHVILLE*

## EXPANDED SERVICE

18 *AMERICAN MOVIE CLASSICS (AMC)*
19 *THE FAMILY CHANNEL*
20 *CABLE NEWS NETWORK (CNN)*
21 *ESPN*
22 *THE WEATHER CHANNEL*
23 *USA NETWORK*
24 *LIFETIME TELEVISION*
25 *MUSIC TELEVISION (MTV)*
26 *THE NASHVILLE NETWORK (TNN)*
27 *CNN HEADLINE NEWS*
28 *NICKELODEON*
29 *TURNER NETWORK TELEVISION (TNT)*
30 *COUNTRY MUSIC TELEVISION (CMT)*
31 *THE DISCOVERY CHANNEL*
32 *ARTS & ENTERTAINMENT (A&E)*
33 *VH-1*
34 *THE LEARNING CHANNEL (TLC)*
35 *SCI-FI*
36 *SPORTSOUTH*
37 *COURT TV*
38 *ESPN2*
39 *BLACK ENTERTAINMENT TELEVISION (BET)*
40 *THE HISTORY CHANNEL*
41 *ODYSSEY (F & V)*
42 *C-SPAN*
43 *HOME AND GARDEN TELEVISION (HGTV)*

## OPTIONAL PREMIUM CHANNELS

15 *SHOWTIME*
16 *THE DISNEY CHANNEL*
17 *HOME BOX OFFICE (HBO)*
44 *VIEWER'S CHOICE - PPV (Freq. A-1)*

## CHANNELS ADDED

**Jan-92** *ARTS AND ENTERTAINMENT*
**Jan-92** *CMT*
**Jan-93** *VH-1*
**Nov-93** *SCI-FI*
**Nov-93** *THE LEARNING CHANNEL*
**Dec-94** *SPORTSOUTH*
**Sep-95** *VIEWER'S CHOICE*
**Mar-95** *FAITH & VALUES 9/96 ODYSSEY*
**Mar-95** *COURT TV*
**Apr-96** *ESPN2*
**May-96** *THE HISTORY CHANNEL*
**May-96** *BET*
**Oct-96** *WPGD*
**Oct-96** *WNAB*
**Mar-97** *HOME AND GARDEN TELEVISION (HGTV)*

# APPENDIX E

| CHARTER COMMUNICATIONS | ACCOUNT NUMBER | BILLED FROM | BILLED TO | DATE DUE | INCLUDES PAYMENTS RECEIVED BY |
|---|---|---|---|---|---|
| | 10325-121797-02-3 | 4/16/97 | 5/15/97 | 05/01/97 | 4/08/97 |

FOR- 421 MARTHA LN # C

| | | |
|---|---|---|
| 3/15 | BEGINNING BALANCE | 46.26 |
| 4/06 | PAYMENT<br>THANK YOU | 46.26- |
| 4/16- 5/15 | BASIC SVC TIER | 10.70 |
| 4/16- 5/15 | EXPANDED SERVICE | 19.96 |
| 4/16- 5/15 | HBO | 10.95 |
| 4/16- 5/15 | 1 CONVERTER(S) | 1.30 |
| 4/16- 5/15 | 1 REMOTE(S) | .10 |
| 4/16- 5/15 | SALES TAX | 1.05 |
| 4/16- 5/15 | FRANCHISE FEE | 2.15 |
| 4/16- 5/15 | FCC ADMIN FEE | .05 |
| 4/15 | BALANCE DUE | 46.26 |

APR 16 THRU MAY 15, 1997

CUSTOMER SERVICE
(24 HOURS A DAY, 7 DAYS A WEEK)
615-552-2288

OFFICE HOURS (WALK-INS)
MON-FRI 8AM-6PM, SAT 9AM-NOON

THE PROMPT MANNER IN WHICH YOUR PAYMENT HAS BEEN MADE IS APPRECIATED. WE VALUE YOUR PATRONAGE AND WILL DO OUR BEST TO PROVIDE YOU WITH QUALITY SERVICE EVERY MONTH.