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## **All wired up and no place to go: The search for public space in U.S. cable development**

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**Abstract.** This article describes cable systems in the United States and the ongoing processes of commercialization and concentration, as well as accompanying critical trends in technological development. Current policy issues are covered as a background to our discussion of issues relating to the nature of public communication in the U.S. The principle issues dealt with in this article are the closely related matters of what defines a public forum in the U.S. context of cable television and whose rights of freedom of expression must be considered in deciding the future structure of the industry.

### **Introduction**

The principal issues dealt with in this paper are the closely related matters of what defines a public forum in the U.S. context of cable television and whose rights to freedom of expression must be considered in determining the future structure of the industry. In a country where there has never been a great deal of public ownership of and exercised access to the electronic mass media, cable television in the U.S. represents a continuation of that pattern. With negligible exceptions, cable systems are all privately owned, and control over increasingly concentrated supplies of cable programming rests in private hands. This fact, combined with the fact that only a very small number of cable markets have more than one system in operation, suggests that there are severe limitations on the scope of public influence over the system of cable television in the U.S. The significance of critical facts about this situation are examined in detail in this paper. Furthermore, we examine the claims made by cable monopolies to have rights of free speech in light of the fact that these claims implicitly and successfully seek to supersede competing claims to rights to free expression by broader segments of the American public.

In many ways, media development in the United States and other technologically advanced societies depends on the aesthetics of technological control. Futuristic visions about communication technology are the stuff of nightly news, television commercials, popular cinema, magazine ads, and corporate strategic planning. From this perspective, "progress" generally is measured by the rate and scale of technological innovation. Put plainly by Rupert Murdoch, the information age is like a steamroller: One must either get on for the ride or become part of the pavement. From this viewpoint, fundamental questions about how "progress" is defined, and whether its benefits are enjoyed universally, are irrelevant. The presumed inevitability of this pre-formed *deus ex machina* justifies unpoliticized efforts by special interests with the most power to occupy the driver's seat. Put in theoretical terms by Jurgen Habermas (1973) the fundamental challenge to those in control of advanced capitalist societies is to make non-generalizable interests appear to be generalizable. In many ways, the shaping of cable television in the U.S. provides a textbook illustration of this notion.

Today, the impact and potential of specific technologies (such as the satellite, the computer, and fiber optics) tend to occupy the foreground of discussions about the "information age". Either implicitly or explicitly, these debates often illustrate some variation on the trite McLuhanism "the medium is the message". The basic assumption is that the future is a blank slate which can be inscribed on the basis of the raw potential foreseen in technological scenarios, and there is little regard for the influence of the dominant social institutions in society. A shortcoming of this perspective is its absolution of our media institutions and our media policy makers from accountability for the evolution of our media environment. Not only is it essential to understand media technology in its historical context, but a "technology" needs to be conceived both as artifact and as a form of human organization. The design of future communication systems is not simply technological development in a narrow sense, but it is also political and cultural development, carrying with it the responsibilities for fostering a healthy public sphere. The firmly entrenched power of U.S. media institutions, and the technical complexity of the technological systems on which they rely, make it difficult to conceive of radically democratizing public discourse through the mass media. This problem is reflected in part by the absence of means for democratically distributing social control over the development of emerging media systems and by the general political protection of established media institutions in their efforts to marginalize competing models of technologically mediated public expression.

Concentration and integration are well established throughout the U.S. cable industry. Concentration is especially strong in cable system operations, as well as in pay cable and program suppliers. And there is considerable integration between cable system operations, basic and pay cable ownership, as well as with program suppliers. Because of these integrated activities, it is increasingly difficult to distinguish between cable, broadcasting and film industries, although the industries themselves and the government still insist on these distinctions. The following overview of cable system economics, program supply, and related public policy illustrate these parallel trends.

### **Cable's challenges to a free marketplace of ideas**

The history of cable television in the United States is one of humble origins, beginning in the early 1950s with small systems in rural and mountain communities where it was conceived as an enhancement to broadcast reception and in fact was defined as "community antenna television". Cable television is no longer simply a system for re-transmission of broadcast signals, particularly after a 1977 federal appeals court decision to allow a young company named Home Box Office (HBO) to compete with the commercial broadcasting networks to bid for programming.<sup>1</sup> As a result of the decision, legal obstacles were removed to permit HBO to provide recent Hollywood films and major sporting events via microwave relay (and later by satellite) to cable systems around the country. Since that time, cable TV in the United States has become a multi-billion dollar industry. Satellite interconnections have made it possible for many new programming operations to reach a national audience over the wire. In the process of its evolution, cable industry leaders have made little effort to develop a system which is responsive to the spirit of localism which was present in the early visions of cable, nor have they been responsive to independent programmers. In fact, there is general hostility by dominant players in the cable industry to sources of television programming which are not commercially controlled by the increasingly concentrated cable cartel, as the following discussions indicate:

*Problem #1: Local cable ownership and vertical integration*

Cable systems in the U.S. are almost always owned private companies which are granted exclusive franchises from municipalities to operate in a specific location, and only 50 cities have competing cable companies (Lewyn, 1991). At the beginning of 1991, there were 10,823 operating systems serving 28,798 communities. Most systems are owned by an increasingly concentrated group of Multiple System Operators (MSOs). At present, 16 companies reported one million or more subscribers in the early 1990s, while the top twenty MSOs served 66% of basic subscribers in 1989. Furthermore, 24% of these subscribers were served by the top two MSOs, Telecommunications, Inc. (TCI) and Time Warner. By 1991, TCI, the leading cable operator, served one out of every four basic subscribers, and received \$1.8 billion in subscription fees from 8 million subscribers (MacManus, 1990). If TCI's majority-owned companies are included, the number of subscribers totalled 8.4 million (*Broadcasting Yearbook 1991*, p. D-3).

The initial costs of setting up a single local cable system may be considered relatively high, as laying cable runs around \$10,000 per mile in rural areas, \$100,000 in urban centers, and \$300,000 per mile for underground installations. Yet, there are few other expenses. Very little programming is initiated by cable systems at the local level, as only about one half actually originate programming, with the average time per week around 23 hours. Equipment costs are extremely low, compared to other programming sources (*Broadcasting Yearbook 1991*, p. D-3). Other expenses include fees paid to basic channels and pay services according to the number of subscribers on each system. (Example: USA Network receives 13 cents a month for each cable subscriber. *Standard & Poor's Industry Surveys*, 'Leisure,' 4 July 1991 p. L40). While initial investments are claimed to be high, there are big pay-offs. From the mid-seventies, revenues for the cable business grew steadily, although annual revenue growth slowed during the end of the decade, from 38% in 1980 to 13% in 1990. By 1990, total revenues reached nearly \$21.4 billion, including basic and pay cable subscriptions. Cable operators still keep a large percentage of subscriptions (as much as 80%), while the remainder is paid to the program supplier (*Standard & Poor's Industry Surveys*, 'Media,' 7 Feb. 1991, p. M29).

But cable system operators also profit from miscellaneous revenues, such as the sale of advertising, installation, converter and remote control rentals, pay-per-view fees, fees from shopping channels, expanded basic service,

and other services (*Standard & Poor's Industry Surveys*, 'Media,' 7 Feb. 1991, p. M29). Advertising is the fastest growing source of miscellaneous revenues, and is seen by many as cable's "next frontier" (Walley, 1991; MacManus, 1990). By 1987, cable advertising sales were reported to be "eat[ing] a hole in local broadcast revenues," as low-budget cable spots attracted local and regional advertisers at 1,400 cable systems (Stilson, 1987). By the beginning of the decade, 21% of all systems accepted advertising on their local origination channels. Even though these local channels derived little advertising revenue overall (less than 5%) through the 1980s (*Broadcasting Yearbook 1991*, p. D-3), some systems were receiving over \$30 million annually from local ad sales by the early 1990s ('Cable Changes the System from Within,' 1990, p. 90; *Broadcasting Yearbook 1991*, p. D-3). As a whole, advertising is expected to provide cable systems with \$2.8 billion in revenues in 1991 (*Standard & Poor's Industry Surveys*, 'Media,' 7 Feb. 1991, p. M29).

Average fees charged to subscribers have varied with each system over the years and have been influenced by government regulation. But with cable deregulation measures in 1986, it is safe to say that cable rates have increased significantly. According to the U.S. General Accounting Office (GAO), basic rates have increased 61% since deregulation (Lewyn, 1991). The GAO further observed that between December 1986 and October 1988, cable rates climbed twice the rate of inflation. Another study recently cited these above average increases in cable rates as one of the nonmarket prices affecting inflation (Evans, 1991). By early 1991, the average monthly basic rate was \$16 (*Broadcasting Yearbook 1991*, p. D-3). Despite all the public attention to rate hikes, basic fees still are expected to increase significantly during the next year (*Standard & Poor's Industry Surveys*, 'Media,' 7 Feb. 1991, p. M29).

In the late 80's, cable companies started other schemes to glean even more revenues. The process of *tiering* – adding separate tiers of "basic" cable channels at different rates, or "unbundling" the channels that basic cable offers – became common again as a result of proposed rate re-regulation. Tiering would enhance cable companies revenues, while offering subscribers a "confusion of menu choices and pricing schemes" (*Standard & Poor's Industry Surveys*, 'Media,' 6 June 1991, p. M4). Such actions have prompted claims that cable companies were simply offering the illusion of choice, while increasing subscription fees ('Keeping the Lions at Bay,' 1990, p. 56).

*Problem #2: Concentration in the system of program supply*

Cable programming comes from a wide array of sources, including cable-only sports, news and documentary channels as well as a wide range of feature films and other narrative (comedy, drama, adventure, etc.) entertainment programs. The latter category, entertainment programs, are overly abundant on basic cable channels as well as on pay channels. The production of filmed entertainment is dominated by a handful of large, diversified conglomerates, referred to most often as the Hollywood majors. They include Disney, Matsushita/MCA (Universal), MGM/UA, Paramount, Sony/Columbia, Twentieth Century Fox, and Time/Warner. These companies regularly receive over 90% of the revenues from the domestic theatrical market, as well as supplying the bulk of programming to the major networks and syndication market (independent television stations). Another lucrative activity for these companies is the sale of feature films to pay cable channels such as HBO.

In the following sections, we present brief overviews of the nature of various types of entertainment program services on cable and the sources of that programming. Omitted from our discussion is the subject of cable's re-transmission of local and distant broadcast signals. Despite the importance of broadcast re-transmission for the success of cable systems, it is an area which cable systems do not directly control.<sup>2</sup> Nevertheless, our purpose below is to stress those aspects of program supply controlled directly by cable interests. Our scope is further narrowed by our primary emphasis on entertainment programming, since the "Hollywood connection" has been central to the success of the cable industry.

*Basic service*

"Basic" cable channels are those that cable systems offer for a basic monthly fee. (Cable operators are required to carry at least 20 channels.) They include a range of cable channels (sometimes referred to as networks), plus "superstations" (broadcast stations which are available on a national or regional basis via satellite), as well as home shopping channels. While the cable boom in the 70s was related to pay cable's menu of movies and special events, basic channels (such as ESPN and CNN) also offered viewers services not available on over-the-air channels. Channels such as Discovery and Arts & Entertainment present a range of documentaries and informational programming, while CNN features 24 hour a day news coverage. Basic cable channels typically purchase feature films after

independent broadcast stations (or the syndicated market), although in the late 1990s film distributors started by-passing the syndicated market, and selling first to basic cable (Dempsey, 1990).

Basic cable can be quite lucrative if a toehold can be established in the cable spectrum. An example is the USA Network which received total revenues of \$267 million in 1990. Just under 38% of this amount was from subscribers' monthly bills, while advertisers supplied the bulk of USA's revenues (Dempsey, 1991). The USA Network is not unusual, in that cable programming is increasingly surrounded by advertising messages. Despite early promotion touting advertising-free content, more and more cable channels rely heavily on advertising for increased revenues – including channels which could be considered *only* advertising, e.g. home shopping. In 1986, almost \$1 billion was received from local and national advertising revenue. By the end of the 80s, there were over 70 advertising-supported cable networks (Harris, 1991). Some of these channels experienced dramatic increases in ad revenues, as cable continued to eat away at the traditional broadcast networks' hold on a mass audience. The Discovery Channel's revenues increased nearly 60% in 1990 (Harris, 21 January 1991), while the USA Network's gross ad revenues were \$197 million, a 40% increase from the previous year (Sobel, 1991). Meanwhile, MTV generated \$269 from advertising in 1990, while ESPN brought in \$260 million (Weaver, 1991).

Home shopping networks offer "pure" advertising, exemplified by the Home Shopping Network (HSN) with 5.5 million customers (4 million of which make four or more purchases each year). In 1991, HSN started 24-hour programming, consisting principally of "infomercials" – 2 to 30 minute commercials about goods which typically can be purchased by dialing a toll-free telephone number, sometimes disguised as talk shows. More 24-hour infomercial cable channels are promised if HSN is successful (Colford, 1991).

At the same time, there are considerable problems introducing new basic channels. A recent example is the Courtroom TV Network which experienced typical problems for a new cable service – low subscriber count and virtually no advertising. However, the channel may ultimately succeed, as it is a joint venture of Time Warner, Cablevision Systems Corp. and NBC, and its base is "made up of a chunk of cable systems owned by TCI, Time Warner and Cablevision Systems (Dempsey, 1991). These corporate ties proved helpful recently to another new basic cable network. When Turner Broadcasting System's TNT channel was introduced, it could

rely on the systems owned by Turner's part owners, TCI and Time Warner, to carry the channel (*Standard & Poor's Industry Surveys*, 'Leisure,' 4 July 1991, p. L40).

### *Premium (pay) channels*

As the growth in the cable industry after the court decision freeing HBO to compete against broadcasters for programming indicates, pay cable (particularly HBO) has provided what is perhaps the major stimulus in the growth of cable television in the U.S. Cable systems arrange to carry pay services through contracts (usually from 3–5 years in length) which specify fees paid by the operator plus other provisions. While the cable system operator chooses which pay services to carry, there may be specific incentives and/or restrictions which favor the system carrying only one service, rather than two competing services. Indeed, there is some evidence that systems affiliated with MSO's owning pay services typically carry the parent company's pay channel, a matter discussed further below. Pay channels can be found on 9,000 systems, reaching over 51 million subscribers (*Broadcasting Yearbook 1991*, p. D-3). The average monthly rate for typical pay-cable service was \$9.00 in 1990, while revenues for pay cable amounted to \$4.8 billion in the same period (*Standard & Poor's Industry Surveys*, 'Media,' 7 Feb. 1991, p. M30; *Standard & Poor's Industry Surveys*, 'Leisure,' 4 July 1991 p. L40).

Typically, the cable's operator keeps 50% of pay revenues, while the remainder goes to the program supplier (*Standard & Poor's Industry Surveys*, 'Media,' 7 Feb. 1991, p. M30). Hollywood studios sell films to pay services under long-term contracts (one year, in the case of HBO and Cinemax), for a fee plus a specific amount per household (Sherman, 1984). Often the fee is between \$6–8 million per film, but sometimes license fees are connected to a film's box-office performance (Cieply, 1990). The proliferation of films on pay cable is more understandable when considering that ready-made Hollywood movies still represent extremely economical programming. It also is not too surprising that pay cable channels are connected in some way to the film and television production community, despite the presumed separation between the "film," "broadcasting" and "cable" industries. Pay cable release of major motion pictures usually follows home video release.

Since the failure of the studios' collective efforts to capture their own pay channel in the early 1980s, they have increasingly arranged exclusive deals for packages of films. The efforts to obtain exclusive contracts has en-

hanced the competition between major pay services – that is, HBO/Cinemax versus Showtime/TMC. But the competition also has meant arrangements which tie the pay services to specific studios. For example, while Showtime could refuse some films under certain conditions, Paramount reserved the right to sell films to other pay services, such as STV and regional pay services. The deal was said to involve Showtime paying between \$600–700 million for 75 Paramount features over the five-year period ('Showtime/Movie Channel,' 1984). After similar deals with other film companies (Cannon, Atlantic, DeLaurentis, and Touchstone), Showtime was said to have committed about \$1 billion for exclusive movie rights (Motavalli, 1986).

Meanwhile, HBO countered by signing non-exclusive deals for films, thus preventing Showtime's stranglehold, but also to acquire films for lower prices (exclusive deals are more expensive than non-exclusive). Nevertheless, while HBO promoted the virtues of non-exclusivity, HBO's deals still involved long-term contracts with major studios. The first was with MCA in March 1984, and included access to Universal's films from 1983–1988. Another was with 20th Century Fox and involved recent and "classic" films from the studios vaults, as well as arrangements for co-financing made-for-pay-tv films and Fox distribution of HBO's productions in theaters. HBO also arranged non-exclusive deals with Warner Bros. (with an "exclusivity under certain circumstances" provision) and Orion Pictures (Girard, 1984; 'Cable Report,' 1986; Banks, 1988; 'HBO & Orion Still Going Steady,' 1985). In fact, HBO's arrangements for films have often been *de facto* exclusive.

As HBO grew to become the dominant force in pay cable, the Hollywood majors' resentment grew as well. The film companies complained about the ability of HBO to name its own price for films. Of course, the price was usually not as much as the Hollywood majors felt they should be receiving (or, their "fair share"). By 1982, when other movie channels were paying 45–50 cents per subscriber for a feature film, HBO paid a flat rate of about 30 cents. Some cable systems also resented HBO, and began dealing directly with the studios instead of relying on HBO as middleman. HBO responded by running exclusive films. The studios, however, started resisting HBO's demands for exclusivity, as well as insisting on selling their films on a per-subscriber basis (Mair, 1988).

So waged the war between HBO and Hollywood. An industry observer at the time noted, "Like most business conflicts, the battle between HBO and Hollywood is simply over money – in this case, billions of dollars" (Mair,

1988, p. 13). Finally, Hollywood settled on three strategies in its assaults on HBO:

1. initiating legal actions.
2. withholding films.
3. starting competing pay channels.

As cable proved to be a lucrative venture, the studios were eager to jump into the business. Universal and Paramount were said to be “salivating to get a piece of the cable business” (Mair, 1988, p. 64).

The most audacious effort to get into pay-cable and to undermine HBO was the Premiere Channel. On April 21, 1980, 20th Century Fox, Universal, Paramount, Columbia and Getty Oil signed an agreement to form the Premiere channel, apparently as a direct assault on HBO (Blustein, 1980; Guback, 1979). Getty (majority owner of ESPN at the time) was to supply most of the capital and satellite distribution facilities, while the studios supplied the films. Though the venture was promoted as a boost for competition, especially for independent productions, the group would not sell films to any competing pay cable service for nine months after films aired on Premiere. They further agreed that the license fees which Premiere would pay for their films would be decided collectively. While such policies seemed obviously anti-competitive, some suspected that the strategy was to attack HBO and earn profits, while the Justice Department dealt with the legalities and succeeded in winning a U.S. Federal Appeals court case in which the proposal by the Premiere partners was found to be in violation of federal antitrust laws (Blustein, 1980).

In another attempt made by the studios to collectively challenge HBO’s dominance, in November 1982 Paramount, Universal, Warner and American Express announced plans to become joint owners of the Movie Channel (already owned by Warner and American Express). Two months later, Viacom joined the group, which then proposed to merge The Movie Channel and Showtime (owned by Viacom). The four film companies would own 22.58% of the new pay channel, while American Express would own 9.68% (White, 1985). Again, the antitrust implications seemed obvious: the three majors involved received nearly 50% of revenues from theatrical rentals and nearly the same from pay-cable license fees. The newly-created pay channel would have about 30% of the pay cable market, and thus become an oligopoly with HBO, which then held 60% of the market. The partners argued that the merger would promote competition and challenge HBO’s control. However, the Antitrust Division of the Justice Department didn’t buy it. Finally the two channels were merged

under a partnership involving Viacom, Warner and American Express. Even though Paramount and Universal were kept out of the deal, the new alliance increased horizontal integration in an already concentrated pay cable market. By 1987, Time and Viacom controlled 83.6% of the market in a neat little oligopoly (Banks, 1988, p. 135).

The bickering between the studios and HBO subsided, as they managed a somewhat strained relationship. HBO joined with CBS and Columbia to form a new production company, Tri-Star, in 1982. Although HBO supposedly had difficulty getting Hollywood films on an exclusive basis, in 1981 Columbia Pictures made an arrangement to sell its films exclusively to the pay channel for a five-year period, marking the beginning of a new policy of exclusive arrangements between pay services and the studios (Crittenden, 1986). As an industry pundit commented: "...in spite of bickering and contradictions, Hollywood and HBO have always needed each other" (Mair, 1988). The same might be said in general for the cable industry and Hollywood. Despite claims to the contrary, Hollywood was involved with cable in various ways from its beginning. By the 1990s, the film industry was intimately involved with cable, pay-cable and pay-per-view – if not in terms of ownership, then in on-going customer relationships.

Today, industry lines have been blurred even further by the merger of Time Inc. and Warner Communications. HBO, once the "nemesis" of Hollywood, is now part of a company which incorporates one of the Hollywood majors. Warner Bros. and Lorimar actively produce programming, which appears on HBO, Cinemax and the Comedy Channel, which are carried on 25 of the top 100 cable systems, owned by ATC and Warner Cable.

### *Pay-per-view*

The broadcast or cable-based marketing of individual television programs, including films, boxing matches, and other special events, has been practiced for many years, but cable "pay per view" services now monopolize this market. Over one quarter of cable systems in the U.S. are addressable, allowing customers to order specific programs or events for an extra fee beyond their monthly basic or pay cable charges. By 1991, the addressable universe consisted of 15 million homes, and pay-per-view services had garnered revenues of over \$400 million in the previous year.

Several pay-per-view services started in late 1985, including Viewer's Choice, offered by The Movie Channel/Showtime, and Request TV, started

by former Showtime President, Jeffrey Reiss. Movies available on Viewer's Choice were to be offered at same time as videocassette release. Meanwhile, The Exchange was an arrangement providing for pay-per-view exhibition of motion pictures from 20th Century Fox and most of the other major Hollywood studios.<sup>3</sup>

While pay cable has been viewed by the majors as a formidable obstacle over control of an important distribution outlet, Hollywood has been more excited about (read: has anticipated better returns from) pay-per-view. The film companies especially like pay-per-view's potential of bringing in as much as \$40 million in one night for a blockbuster film. An example was *Star Wars* on pay-per-view, which attracted 1.5 million customers at \$8 each (Mair, 1988, p. 57).

For the studios, pay-per-view represents an "unbundled" method of pricing, as opposed to "bundled" pricing of pay-cable. In other words, it allows more direct pricing of a given film or supply of films. While feature films have played a key role on pay-per-view, there has been heavy competition from home video. Cable operators have been reluctant to add the addressable feature to systems as long as home video first receives feature films. So sporting events have become more attractive on pay per view.

### *Problem #3: The telco-cable battle*

Under today's dominant policy model for cable television, the local municipal franchising authority and the cable operator make crucial decisions about how a local system will be organized and controlled. In most cases, local franchising authorities exert structural limitations by allowing only one editorial voice (the system operator) to determine the mix of programming and channel options within a franchise. Thus, in the name of the cable operator's First Amendment rights, a great deal of editorial discretion is left in the hands of a government-protected monopolist. If instead cable television were treated as a common carrier, control over what is transmitted over the system would be divested from a single entity and the opportunity would be enhanced for access by a greater number of voices over a publicly controlled resource. This is not a solution to the many problems of system integration and concentration in program supply which now plague the cable industry. Nor is it by itself a guarantee that local monopolization will cease. As the following discussion indicates, there are minefields in favoring either the cable industry or the telephone industry in the "cable-telco-battle." Nevertheless, there are some opportunities arising

for new public claims to local broadband services. While the likelihood of realizing these claims is limited, the means for doing so are worthy of serious consideration. Thus, after a discussion of the present status of the telephone industry's interest in and relationship to cable television – particularly by way of public policy and technological development – this paper proceeds with a set of recommendations which need to be confronted if more democratically distributed control over cable is ever to be achieved.

### *The federal role*

As a result of the 1982 court-mandated divestiture of the American Telephone & Telegraph Company (AT&T), a smaller AT&T and seven regional Bell Operating Companies (BOCs) were formed. Among the many outcomes of this judicial decision, also known as the “Modified Final Judgment” (MFJ), was that local telephone companies were prohibited from providing cable television services. This was due to fears that they might engage in discriminatory behavior by providing preferential access and pricing with respect to their own programming. It was also feared they would use monopoly profits from their regulated telephone service operations to cross-subsidize unregulated programming service. Several years prior to the MFJ, the FCC already was concerned about preventing AT&T from assessing subscribers to monopoly telephone service with the costs of its competitive activities, although it has moved progressively in the direction of favoring such efforts.<sup>4</sup> However, in recent years the FCC's economic theory has argued that “efficiencies of competition” could be promoted not only by allowing the post-divestiture BOCs to enter newer, unregulated markets, but also by requiring that these companies open their networks to other companies and provide them with “comparably efficient interconnection,” that is, “access to basic services that is comparable in efficiency to the access they provide their own enhanced [unregulated] services.”<sup>5</sup> The Commission's goal was to promote the development of an “open network architecture” in basic local telephone service to permit all users of the basic network, including the enhanced service operations of the carrier and its competitors, to interconnect to specific basic network functions and interfaces on an unbundled and “equal access” basis.<sup>6</sup>

Through the principles of “open network architecture,” it is thought that greater inter-connectivity and competition will occur at the local level among service and information providers.<sup>7</sup> While today these principles are applied only to *narrowband* telephone networks, they provide guiding principles for the future enhancement of local broadband competition as

well. Broadband services such as the residential delivery of cable television increasingly fall into the emerging vision of what should be defined as "universal service" to individual residences. In 1988, the president of the United States Telephone Association, the telephone industry's leading political lobby, suggested that the concept of "universal service" should include not only voice telephone service but video as well ('Advance Man for Telco Entry,' 1988). However, there presently are statutory restrictions which prevent this from happening. In 1984, the U.S. Congress made it unlawful for any common carrier such as a telephone company to own or to control facilities for delivering video programming in areas where they currently provide regular telephone service, with some exceptions in rural areas (Calabrese and Jung, in press).

Nevertheless, there are a number of indications that federal policy is shifting in favor of telephone industry entry into residential broadband service. For example, the FCC has recommended that Congress repeal the Cable Act prohibition on telephone-cable cross-ownership ('FCC Wants to Loosen Cable-Telco Prohibitions,' 1988). Behind this activity are the formidable forces of telephone industry lobbyists and political action committees, with their "deep political pockets" ('Telco's Army,' 1987). Recently, the judge who presides over the AT&T divestiture has given in to pressure by deciding to lift the ban he imposed in 1982 which prevented local telephone companies from providing information services, pending further appeals (Bradsher, 1991). This decision does not by itself free telephone companies to provide *video* information to residential subscribers since they remain prohibited from doing so according to the terms set by Congress in the Cable Act of 1984. However, it represents one more bit of erosion in the common carrier policy philosophy of keeping separate the provision of information services and distribution services (with common carriers performing the latter). The telephone industry's argument in defense of its right to become an information provider is that it is necessary to provide information services in order to ensure sufficient demand for the investment in new infrastructure to deliver a wide range of business and residential services. Extending this argument, by allowing the BOCs to provide video programming, they will be able to stimulate demand for the new broadband networks they propose to construct. Arguments also have been made that the First Amendment rights of telephone companies are being denied (Winer, 1990).

*Technological puzzle-solving: Fiber optics and broadband switching*

It is essential to recognize the political significance of technological developments currently underway in the area of advanced residential telecommunications services. According to a report produced for the U.S. Department of Justice on competition in the telephone industry, the principal shift in today's network design is reflected by a move away from centralized switching and towards multiple switching terminals distributed throughout a network (Huber, 1987, p. 1.3). The report focuses primarily on voice and data transmission, although integrated voice, data and *video* is most consistent with current developments in telecommunications network development. To provide switching for video programming services, further technological advancements are needed beyond what is currently available on a commercial basis. While fiber optics are highly touted as the wave of the future for delivering the bounty of programming choice to Americans, most long-term visions of broadband residential services see a need for greater sophistication in system architecture than that which predominates in American cable television service today. Otherwise, the argument goes, it will be difficult to stimulate greater competition in the local market. What these visions call for is development in *broadband switching*.

The implementation of broadband switching technology potentially would make it possible for several cable programmers to serve a single market, thereby enabling residential broadband telephone network users to access video services from a variety of sources. Theoretically, under the principle of open network architecture, an unlimited number of cable programming sources could be distributed geographically throughout the network, and there could be price competition for providing any given channel or group of channels. Given its interactive capabilities, a switched broadband network would make obsolete the crude one-way transmission of all programming from a single-location cable headend. A key component of the new generation of switching technology is a "photonic" switching chip – or photonic integrated circuit – which responds to light at varying wavelengths.<sup>8</sup>

The concept of video common carriage already has an analog in the form of database publishing. Companies such as Compuserve, Dow Jones, Mead Data Central, and many smaller ones operate systems which permit residential and business subscribers to dial-up and conduct database searches. While the analogy to text publishing is not perfect, the basic idea of a broadband "video dial tone" is the same as for the narrowband distribution network currently in place for database publishing. Responding skeptically

to the immediate and foreseeable technical feasibility of switched broadband networks, the National Cable Television Association (NCTA) has argued that the telephone industry is far from having developed "the final piece of their fiber puzzle" (National Cable Television Association, n.d.). While NCTA clearly has vested interests in protecting its prevailing centralized cable architecture by raising doubts about the technical potential of switched broadband networks, there undoubtedly will be continued and increasing investment in R&D to complete the "fiber puzzle" by formidable telephone industry competitors. Responding defensively, cable MSOs are moving as quickly as possible to install their own fiber systems which purport to render telco involvement in broadband residential services unnecessary (Fabrikant, 1991). In sum, while it would be foolhardy to predict a date when viable prototypes of broadband switches are available, given the many mediating political and economic factors which are shaping telecommunications network development, the present inter-industry efforts seem to be converging increasingly toward switched broadband networks for residential service.

### *The farce of localism*

Despite mounting contradictory realities, cable television policy in the U.S. has always been nominally committed to localism. The idea behind various requirements placed on the electronic media to report local news and public affairs in general is that such practices will promote localism, or local identity. Working against the effort to foster and support a unique local identity through radio and television stations is the economic pressure to produce for larger markets in order to achieve economies of scale. Thus, small town radio and TV stations typically are over-shadowed by the slicker and more powerful influences of regional stations. The same issue pertains to local efforts in cable television. Locally originated cable programming, despite its folk appeal, lacks the ability to divert significant portions of audience attention away from network and national cable fare. These facts are suggestive of the problem inherent in idea often trotted out in efforts to develop new cable systems, namely, that these systems will help to strengthen the local "community." It is difficult to see how in the absence of a sustained commitment on the part of the local populace and on the part of local community leaders, the local cable company will function as more than simply a node on an expansive circuit of national and transnational program distribution. As Raymond Williams (1979; 1983) has usefully observed, the very term "community" in its contemporary uses increasingly

can mask patterns of elite social control (see also, Calabrese, in press). Williams was very much concerned with the idea of "community" as it pertained to the social shaping of television technology and culture, including cable television, as further discussion below indicates.

Municipal governments generally support the idea of video common carriage, in large part because they no longer wish to play as direct a role as they have in the past in determining who will be able to provide local cable programming services and what the terms of that service will be ('Cities Want Changes,' 1989). Cities realize that the control they exert over cable systems at the local level arguably can be defined as "state action." As such, city cable oversight in the cable franchising process ends up looking suspiciously like prior restraint, thus paving the way for unpleasant First Amendment litigation. Furthermore, and by one well-reasoned estimate, there is also the greater danger of corruption between city officials and cable companies in terms of promises made by one or the other party at the time of franchise negotiations (Brenner, 1988). Unlike the situation which exists in broadcasting, local cable regulators typically allow only one cable system to a market. This situation warrants close scrutiny by those who wish to see greater competition and diversity in local cable programming. As one observer has noted, "To use an analogy, it is as if one company would own the entire television spectrum in a geographic region, and could alone determine its use" (Noam, 1982, p. 209).

Responses by the broadcasting industry to the idea of telephone-cable cross-ownership have been mixed. A primary concern among local broadcast stations is that they not be sidestepped in the development of a new local broadband infrastructure. The president of the National Association of Broadcasters (NAB) wishes to insure that telephone companies be assigned with a duty to carry broadcast signals ('NAB Questions Possible Telco Entry,' 1988). No longer in effect, the "must-carry" rules required a cable system, on request, to transmit every television broadcast signal that is "significantly viewed in the community" or otherwise was defined as "local" according to FCC rules.<sup>9</sup> In a 1985 case, the D.C. Circuit Court vacated these rules, arguing that they "indiscriminately sweep into their protective ambit each and every broadcaster, whether or not that protection in fact serves the asserted interest of assuring an adequate amount of local broadcasting in the community," and that the rules "are insufficiently tailored to justify their substantial interference with First Amendment rights."<sup>10</sup> Needless to say, this presently is a source of great tension between broadcasters and cable system owners. One solution broadcasters

may pursue is to lend political support to video common carriage with the expectation of politically guaranteed carriage of over-the-air TV signals ('Glimmer of Carriage Compromise,' 1988). The cable lobbyists understandably have reacted negatively to the competitive threat posed by the potential entry of telephone companies into the cable industry, a plea shrouded in the language of the First Amendment.

### **Whose free expression? Beyond the rights of monopolists**

Former U.S. National Telecommunications and Information Administration (NTIA) director Henry Geller has identified the two main approaches to media policy which have been employed in the past decade. These two approaches are competition and deregulation. Competition has been possible and inevitable because of the technological developments after World War II (such as microwave transmission, coaxial cable, satellites, fiber optics), and especially because of the merging of computer and telecommunications technologies. Deregulation in the American context has been viewed as necessary to achieve the goal of the competitive system: fast response to dynamic changes in technology and marketplace demands. In this context, control over media development appears as a seamless web of public and private power. Much of the effort to re-negotiate control over emerging technological developments appears in the form of pleas for freedom of speech by large-scale media institutions, including both the cable *and* telephone industries.<sup>11</sup> Lost in the arguments over freedom of expression now occupying policy debates are the interests of fostering and preserving a public sphere of the widest representation and participation. Instead, competing claims for pre-eminent rights of corporate free speech among industrial giants dominates policy discourse.

Increasingly, the state authorizes industry concentration in the name of *laissez faire* and a "free" marketplace of ideas (Bagdikian, 1987). In the process of securing the free speech of large corporations, the state and media cartels deploy the fervent language of civil liberties inherited from textbook constructions of the American colonial movement for independence. The result is that the only "individuals" granted meaningful rights of self-expression are media corporations. Simultaneously, the idea of mandating direct public access to the dominant commercial media or of imposing requirements on the commercial media to satisfy the public's right to hear opposing views on matters of public importance are invalidated. What we

discover is that government can function to privilege certain voices, whether by design or by default, through various means including decisions *not* to intervene, and through the introduction of policy voids through the deregulation of entrenched industries (Mosco, 1990). Deregulation has functioned not simply to “free” the marketplace ideas from the shackles of government control. More accurately, it has removed many possibilities for moderating the subjective control of the media by a homogeneous elite.

The historically acknowledged premises of freedom of expression in American liberal theory not only emphasize the individual’s right to expression, they also highlight the social goals of free association, of participation, and of furthering understanding. They suggest also that there is always a need to balance individual freedom against larger social goals such as rights of access to the media and a right to hear (Barron, 1973; Emerson, 1970, 1976), which are treated by some “strict” interpreters of underlying colonial intentions in American constitutional law, not really relevant at all to freedom of expression. This can be problematic in our present era when, to the extent that corporations are treated as “legal persons” accorded many of the rights traditionally held by individuals—including that of *self-expression*—it is already a reality that the oligopolistic media marketplace of ideas contain little else that can be heard besides the voices of giants talking among themselves. The arguments defending the right of private capital to engage in self-expression in the name of public expression violates some of the generally recognized premises of freedom of expression, particularly the idea that opportunities for participation in public discourse and decision-making should be made possible. What prevails today in the media marketplace is a dangerous equation in which freedom of expression is treated as a property right (e.g., Curran, 1979; Schiller, 1989). Although this equation is rapidly becoming unassailable, if it has not already reached that status, it must be challenged by a counter-argument which says that democratic and public discourse must be supported through legitimate mechanisms for *public* control of and access to media institutions.

Recent policy decisions have rejected the enforcement of a right of media access on the basis that it is inappropriate editorial control by government. In the U.S. in the last decade, this issue of government as content regulator has served as the crux of a heated debate. It is probably best illustrated in the FCC’s 1987 decision to cease enforcing the Fairness Doctrine, which obligated broadcasters to air alternative perspectives on controversial issues. For over half a century, the federal government has imposed public

service requirements on broadcasters for the purpose of ensuring that the public has access to balanced information on important issues. The "Fairness Doctrine" has been viewed as a means of broadening representation on what historically has been considered a scarce economic resource, namely, the electromagnetic spectrum on which broadcasting takes place. In attempting to reconcile the interests of private industry with what is viewed as the more general public interest, the FCC sought to impose modest editorial influence on broadcasters. Today, the FCC argues that such regulations are inappropriate for two reasons. First, the FCC argues that while at one time there were physical limitations on the number of television signals available in a given market due to the scarcity of space on the electromagnetic spectrum, the new media such as cable, VCRs, satellites, and other technologies obviate the scarcity rationale. Second, the FCC argues that the Fairness Doctrine prevented broadcasters from taking positions on controversial issues for fear that by doing so they would be obliged to represent alternative views with which they disagreed. It has been argued that instead of promoting lively debate the Fairness Doctrine led broadcasters to remain silent on controversial issues.<sup>12</sup> This rationale for the removal of a public service obligation in commercial broadcasting is significant for *cable* policy as well, since the local monopoly held by each cable operator over its markets has led to the unfortunate result that consumers must accept the programming chosen for them by the cable operator who possesses virtually uncontested editorial control over the system.

In essence, the local cable company functions as an unregulated monopoly with minimal public service accountability. What obligations a cable company does have to a local public are, in fact, worthy of far greater concern than is actually shown. The major cable MSOs have a vested interest in limiting the ability of cities to influence decisions about what commercial channels are available on a system and about what sort of public access obligations might be imposed. Indeed, cable interests have argued that access requirements are in violation of their First Amendment rights due to "forced association" ('Showdown in Kansas City,' 1988). Such an argument assumes that the First Amendment rights of a government-sanctioned cable monopoly should supercede the claims made by other parties seeking access to the system. It is an argument for the public protection of private censorship at the same time public power was used to establish a private monopoly by way of an exclusive cable franchise!

One possible solution to this problem is to expand the number of inde-

pendent programming sources in a given local market. However, the big MSOs do not wish to see multiple cable systems competing in the same geographic market. The major MSOs are heavily invested in cable channels and presently are able to severely inhibit the ability of competing channels they do not own to survive on their systems. Under the Cable Act of 1984, MSOs have tremendous discretion to handicap commercial competitors seeking to lease space on their systems, including the ability to refuse to provide billing services for those channels, the ability to terminate an agreement with a lessee if there is a change in programming (even to the point of "prescreening" all programs), and the ability to charge prohibitively high access fees (Lampert, Cate and Lloyd, 1991). In conclusion, the dominant MSOs, with their combined local distribution monopoly and vertical integration of programming and distribution on a national level, could not have done better if they had written the Cable Act themselves, which they very well seem to have done. This power explains a great deal about why the dominant MSOs have a vital interest in preventing Congress from permitting telephone companies to deliver television programming. Such a change would radically upset the ability of existing MSOs to engage in anti-competitive practices. In conclusion, the fundamental problem faced by policy makers in deciding how best to promote greater diversity and access in local cable systems is a two-edged one. On the one hand, the leading MSOs are able to control programming to an unwarranted degree through unfair competition. On the other hand, the telephone companies are able to cross-subsidize their "basic" and "enhanced" services to gain an unfair advantage in financing programming operations. The general solution advocated below seeks to mitigate the worst of both of these threats.

### **The search for public space**

In his 1974 book, *Television: Technology and Cultural Form*, the late Raymond Williams attempted to explain the nature of the relationship between communication technologies and society while linking that analysis to his critical insights about culture and politics. A significant focus of Williams' book is the ownership of communication technology and its implications for the production of culture. In particular, Williams was an advocate of the separation of the ownership of the means of television program *production* and the means of program distribution or *transmission*.

In separating the two, Williams advocated a regulatory scheme for the nascent cable television industry, advanced by others at that time as well, which increasingly has been a focal point of heated controversy in media policy since the early 80s. That controversy, which emerged around the time of the breakup of AT&T and the time significant amendments to the cable television provisions of the Federal Communications Act were being forged, is now increasingly visible to Americans.

Public policy makers are often the loudest proponents of technological fixes of one sort or another. This prominence should not be surprising, since the appeal of quick solutions to fundamental social problems is hard to resist, and policy makers often are in positions to attempt sweeping changes through regulation and de-regulation, by introducing tax-based incentives (e.g., shortened depreciation schedules on technology), and by committing large sums of public funds to the development of new technological systems through contracts for projects deemed essential to “national security” interests and through outright grants for projects deemed beneficial to the economy.

All of this occurs in the name of “progress,” that elusive term which often escapes semantic scrutiny, arguably resulting in the elevation of particularistic interests whether deservedly or not, to the level of general interest for the public at large. What is “progressive” is stood against what is defined as regressive, even unpatriotic. While such polarization is not the prevailing tactic in all media policy making, for that would escalate all policy making to crisis proportions, it nevertheless is a weapon used strategically to silence opposition. More appropriate for the day-to-day business of telecommunications policy making is the quiet exclusion of public representation and participation in decisions which, after all, are geared first to the aims of capital accumulation and second to a definition of public welfare which emerges from that primary aim.

During the Reagan years, with the dismantling of welfare-state bureaucracies and with the deregulation of many industries, including telecommunications, what little existed of public service obligations for the broadcast media were radically eroded as the mentality in media policy increasingly became one of explicitly favoring a “marketplace” rather than a “public trustee” model for broadcasters. At the same time, and despite the vocal opposition of a scant few voices in Congress, the *cable industry* also moved an even greater distance from a public service model as it became increasingly predatory by inflating subscriber fees with minimal opposition through to its virtually unregulated monopoly power at the local level. Due

to the abandonment of national politics by the Left, the state acts as an instrument of unopposed Right-wing politics. A question which this leads to in the arena of media politics is whether and to what extent there remains any *hope* for social democracy in a time of increasing industrial concentration and technocratic development. Cable television is, as we have noted, at the center of such changes. In the discussion below, cable policy and broadband residential telecommunications in general are treated as necessarily central arenas of consideration if such hopes are to be realized.

It is important to consider the dual problems faced by community leaders in setting up and maintaining local cable systems. On the one hand, they are forced to be responsive to the free speech claims of cable companies, while on the other they must seek to generate a sense that the local cable system is not a placeless entity with a commitment to nothing other than mobile, global capital accumulation. Rather, the idea of localism demands that a cable system function as a place in itself, a *public* place where representation and participation by those who support its existence is possible. This space, if it is truly public and responsive to local community needs and interests, must respect distinctions between the all-too-frequently elided concepts of "consumer" and "citizen," and "audience" and "public." These are not hair-splittings for the scholar, for if they are lost on the people to whom they refer and the policy makers making decisions, they are of little value elsewhere.

More to the point with respect to cable television in particular is an analysis made by Raymond Williams during a visit to the United States in the early 1970s, when he witnessed the beginnings of the transition in media development we are now experiencing. Williams recognized, as we all must, that local community identity and autonomy are difficult to foster and preserve in an age when the circuits of capital are increasingly global. His insightful comments and recommendations for the development of a democratic system of cable television which is responsive to *local communities* are quoted at length here, minus the ellipses for the sake of readability:

For many years yet, central programming and networking authorities are going to continue. They must become or continue as public authorities, expressing the concept of the airwaves as public property. But it would be wise to look again at the question which is still unresolved from the earliest days of broadcasting: the relation between transmission and production. In all current systems too few people are making the primary decisions about production. The real need is for more independent production companies, which would be given publicly protected contracts with the programming and networking authorities. At a national level, cable facilities, like the airwaves, must be conceived as

public property, and the operation of these facilities, by any group to which licence has been given, must be part of the system of publicly protected contracts between the cable operators and production companies. In many cases, there could be permanent links, in particular communities, between local public-owned cable companies and production companies: real local bases from which some material would pass into one or another of the networks. At the same time it would be necessary to have some specialised national production companies: alternative providers of national and international news and public affairs programmes; educational and arts companies; a central library and information video-service. The community emphasis is so right, in its own terms, and could so notably contribute to solving the problems of urban information flow, democratic discussion and decision-making and community identity, that it is easy to overlook the dimension that is inevitably there, beyond the community – the nation and the world with which it is inevitably involved. The back-up national and international services would protect community television from its greatest danger: that its legitimate sense of locality will leave a gap which will be exploited by wholly irresponsible institutions beyond it. (Williams, 1974, pp. 148–149)

Williams recognizes, as we all must, that localism can not exist without support from both within and outside the community. Following Williams, the discussion below attempts to provide a more specific basis for a social democratic model of cable television that is open to the demands of *localism* without neglecting the *global* nature of telecommunications in late capitalism.

Several fundamental unanswered policy questions are raised by the prospect of removing present bans on telephone company ownership of local cable television systems. What is generally envisioned by supporters of telephone industry entry into broadband residential service represents a significant departure from the one-to-a-market, vertically integrated model of cable television which currently predominates. However, as indicated above, the likely new entrants have their own potentially anti-democratic and anti-local agendas to pursue. In recognizing that market economics are a necessary factor in ensuring healthy competition in the marketplace of ideas, the recommendations provided below point to the sensitive and problematic areas which must be politicized and continually addressed in order to avoid the unhealthy media cartelization which now prevails in cable television. At present, a small handful of vertically and horizontally integrated cable companies monopolize the vast number of profitable cable systems around the country. Thus, they hold subscribers hostage. It is also a marketplace in which a growing *monopsony* exists in the sale and purchase of programming.<sup>13</sup> Thus, they hold independent program providers hostage as well (Aufderheide, 1991).

Responsiveness is required if technological and institutional transformations in cable television are to occur in a social-democratic manner. In a

provocative and useful analysis of fundamental social and economic problems in the British mass media, James Curran emphasizes the need to reduce the domination of the media by conglomerates, the need for invigorated media access, and the need for publicly derived subsidies in order to support public expression for purposes other than profit accumulation (Curran, 1984). The perspective is highly relevant, perhaps more so, to the American commercial media context. In the remainder of this section, Curran's recommendations are discussed for their relevance in considering American cable television in particular.

As this paper documents, vertical integration and horizontal concentration within the cable industry are worsening problems. One key question which now arises is whether video common carriage will present a more democratic alternative. Among the critical issues to be decided is whether common carriers should be permitted to own television production and/or programming subsidiaries. As already noted, the court responsible for the AT&T divestiture has already begun to clear the path by removing its barriers which prevented local telephone companies from marketing narrowband information services. The Cable Act could be modified accordingly if Congress so chooses. The major concern which arises from this issue is the prospect of common carriers using monopoly to cross-subsidize competitive programming operations. It is not unreasonable to suspect that the Bell Operating Companies (BOCs) will exploit their monopoly positions to extract funds from local telephone subscribers in order to subsidize their entry into a brave new world of residential video services.

Despite the stated interest by members of the telephone industry in owning video programming operations, this path is not advisable. Removal of policies prohibiting common carriers from owning video programming subsidiaries, and leaving only the nonstructural safeguards described in Computer III, would enable them to have unfair advantages through both the potential to cross-subsidize and the potential to discriminate against competitors. In this situation, government action would facilitate anti-competitive behavior by monopolies involved in video programming, contributing to yet another potential problem, which is the abridgement of the First Amendment rights of disadvantaged competitors in video programming. Setting aside the issue of whether common carriers should be permitted to own cable programming subsidiaries, and focusing exclusively on the television marketplace as it stands today, a number of tensions appear. As noted above, several cable multiple system operators (MSOs)

are major sources of television programming. Under a common carrier model of cable television, these and other corporations involved in both programming and cable system ownership could be forced to choose between serving as program sellers or as cable system operators for the same reasons noted above, namely, that common carriers with program operations would be in a position to engage in anti-competitive behavior. Certainly, common carriers must be prevented from serving as exclusive sellers of particular information, for that would lead us to the same anti-competitive problems faced today with the existing cable industry.

Perhaps more significant than any other potential benefit held out by the prospect of a democratically controlled system of video common carriage is the potential to attract smaller, independent programming sources which appeal to narrow market segments. However, this promise may be illusory without public finance. Some have argued convincingly that freedom of speech is determined by the degree to which ease of access exists, with the best representative of a viewpoint being the one who holds it and, consequently, adheres passionately to it (Owen, 1975).<sup>14</sup> There presently are low economic and political incentives to induce cable operators to accept the marginal costs of delivering programming to relatively narrow audience segments such as minority and elderly populations. As to how this problem can be resolved in a public switched broadband network environment, two issues must be addressed. First, the nature and degree of public control over the network itself must be determined. Second, the means by which public subsidies for program development at both the national and the local levels must be developed.

How should the construction and operation of a switched broadband cable network be financed? When a local telephone monopoly upgrades its physical plant, it does so under the close scrutiny of its state regulator, a public utility commission (PUC). Repayment of debt for capital expenditures to construct and upgrade facilities is derived from a guaranteed rate of return, which is set by the PUC. In the case of constructing a broadband common carrier system, an issue arises over whether system construction should be financed from the rate base provided by subscribers to basic local telephone service. What of the subscribers who never intend to pay for cable television services over the new network? Should they have any choice about whether to subsidize the construction of a new network which they may not have an interest in using? Of course, an argument can be made that the new network is a "public good," like highways, bridges, and public libraries. Tax money is used to finance these projects because they are

viewed as benefits to the population in general. In analogous fashion, the government-controlled income of telephone common carriers might be used to finance a broadband network capable of delivering television signals. Furthermore, it has been noted above that we may find a federal universal service mandate in broadband residential service as an extension of the present narrowband mandate. In exchange for permitting the telephone industry to use publicly regulated monopoly profits for such a purpose, however, should be a commensurate level of public control. From the telephone industry's perspective, this should be viewed as a reasonable *quid pro quo*: Permission to generate revenue from the provision of broadband services should be granted only in exchange for channeling a portion of an operating company's guaranteed monopoly profits into public subsidies for independent television program development and production. As Curran suggests, advertising could also be assessed a small levy as a further means of creating a means for sustaining programming activities which go beyond the profit motives of individual commercial operations but which nevertheless depend on them to exist. These measures are socialist, now a dirty word worldwide, but they are also market-oriented. What they depend on is a *healthy* commercial marketplace in order to sustain a vital public space in cable television, something which currently does not exist. Without these or other forms of sustained financial infrastructure for public program support, it is hard to see how public access can move beyond the predominantly ghettoized form it presently takes.

## Conclusions

This article has addressed some of the major issues which emerge from the possible transformation of cable television in the United States from a one-to-a-market, vertically integrated model to a common carrier model. Of particular concern are issues related to financing the construction of a broadband common carrier system. Secondly, the issue of whether video common carriers should be permitted to own programming operations must be resolved. Third, in seeking to increase the diversity of access by multiple sources of programming, it is incumbent upon public policy makers that they not overlook the growing concentration of ownership among programming sources and the implications that has for reducing access by small independent sources.

Video common carriage, though hardly a solution by itself to the many

problems plaguing the cable industry, is a desirable advance beyond today's local monopolies over available cable channels. Under a common carrier model of cable television service, editorial control ideally would rest completely in the hands of individual programming sources rather than in the hands of a single cable operator who holds the self-interested power to decide what information and services should be available to a community. The enthusiasm which such efforts create, however, are also dangerous due to the prospect of "the phone company" becoming "the television company," especially if the television company is an information provider. If any single set of political decisions holds overwhelmingly significant potential for changing the future of the U.S. media environment, it is likely to involve the telephone industry in the delivery of video programming to the home.

## Notes

1. *Home Box Office, Inc. v. F.C.C.*, F.2d 9 (1977). See also Fadde and Hsiung (1987).
2. The subject of cable re-transmission of broadcast signals is, in fact, very important due to the broadcasting industry's concerns over copyright ownership.
3. Twentieth Century Fox, Form 10K, 1985, p. 8.
4. For a historical overview of these developments, see Calabrese (1990).
5. Third Computer Inquiry (Computer III), 104 F.C.C. 2d 958 (1986), at 1027.
6. *Ibid.*, at p. 1019.
7. *Ibid.*
8. For more detailed discussions, see Calabrese (1990); and Calabrese and Jung (in press).
9. 47 C.F.R. §§ 76.57–76.61 (1984).
10. *Quincy Cable TV, Inc. v. FCC*, 768 F.2d 1434, 1463 (D.C. Cir. 1985), cert. denied sub nom. *National Association of Broadcasters v. Quincy Cable TV, Inc.*, 476 U.S. 1169 (1986).
11. Writing in the name of the free speech rights of the beleaguered cable monopolies is Knox (1984). Writing for the downtrodden telephone monopolies is Winer (1990).
12. reSyracuse Peace Council, Memorandum Opinion and Order, 2 F.C.C. Rcd. 5042 (August 6, 1987).
13. A "monopsony" is a situation where there are multiple sellers (in this case, programming) but a monopoly of buyers (in this case MSOs). More accurately, the present condition could be called an "oligopsony."
14. Owen derives this viewpoint from John Stuart Mill's essay *On Liberty*.

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