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The process of cable television franchising : a New York City case study

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THE PROCESS OF
CABLE TELEVISION FRANCHISING

A NEW YORK CITY CASE STUDY

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INTRODUCTION

During the last two decades, cable television has evolved from a means of supplying a few television signals to rural areas into a highly sophisticated medium, capable of providing diverse programs and services unavailable from conventional television. As might have been expected, New York City was one of the first urban areas to develop large-scale cable television operations. All of the participants in the franchising process during the sixties, and even into the seventies, were pioneers of a brand new industry. Federal, State and local authorities, and the companies themselves, were groping to explore the potential of cable and to define their places in the phenomenon. Viewed in this light, the franchising authorities of New York City did an admirable job. They should not be judged by present standards for any mistakes and shortcomings.

Since only Manhattan and a small part of the Bronx are franchised for cable television, the City obviously faces a wide range of complex and difficult decisions in franchising the other four boroughs. This study does not provide substantive recommendations for these decisions. Instead, it focuses on the City's procedures for franchising cable systems. The report thus begins by discussing technological and economic aspects of cable television. It then documents the history of cable franchising in New York City, in order to point up some of the problems which the City has experienced in the past. It concludes by highlighting problem areas in the franchising process and by suggesting possible reforms.

This report does not suggest any quick fixes for the franchising process. Instead, it attempts to analyze the City's experience to suggest areas for future analysis.

BACKGROUND

A. *Development of the Cable Television Industry*

Historically known as “community antenna television” (CATV), a cable television system receives television and radio signals by means of a high antenna or by microwave transmission, amplifies the signals, and distributes them by coaxial cables to the premises of its subscribers, who pay a fee for the service. Cable originated in the early 1950s as a means of improving television reception where over-the-air signals from conventional broadcast stations were interrupted by hilly or mountainous terrain. A community antenna—essentially a giant set of rabbit ears—would be set up on the highest point in the area, a “head end” would process as well as amplify the signals, and a coaxial cable would be strung along telephone poles into homes. In cities, cables are run underground, usually in already-existing conduits, into houses or apartment buildings.¹

In many locations, especially in rural areas, cable television service is still just a device for improving television reception. In the cities, however, reception is generally good; the cable industry thus had to offer additional channels of special programming to attract subscribers. New technology in the 1970s allowed a coaxial cable to carry 35 or more channels, through the use of an electronic device known as a “converter”²—the little box which sits on top of television sets hooked up to cable in New York City. Cable systems today thus can offer many television channels in addition to the VHF (Channels 2-13) and UHF (Channels 14-84) signals from conventional broadcast stations which they deliver to viewers. A cable television company can utilize its additional channels in a variety of ways. It can produce local programs solely for distribution to its subscrib-

ers; it can buy nationally distributed programs; or it can provide time to businesses, educational enterprises, the public, or municipal agencies for program production.

Rapid technological developments are paving the way for a revolution in cable communications. First, cable's high channel capacity allows it to offer a wider variety of programming than conventional TV stations. For example, a system with 100 channels—still far beyond present financial feasibility—could carry conventional television stations, specialized programming, and municipal services, with the remaining channels available to any programmer who might want to lease all or part for free, commercial or pay broadcasts.³

Second, cable systems use communications space satellites to form national networks. Satellite networks offer live programs to a national audience. New national program services—ranging from 24-hour news to children's programming—have been specially developed for satellite distribution.⁴

Third, two-way cable television permits electronic signals to be transmitted back from subscribers to a head-end; this permits subscribers to do their banking, answer questions posed by pollsters, and place orders from a mail-order catalog displayed on the screen.⁵ While the technology exists to make two-way cable possible, the feature has not been developed widely because of its very high cost.⁶

B. An Overview of Cable Television in New York City

There are three cable television systems⁷ operating in New York City today.⁸ Manhattan Cable Television, Inc.,⁹ operates in the lower and middle sections of Manhattan, up to 79th Street on the West Side and up to 86th Street on the East Side. Teleprompter Corporation serves the upper section of Manhattan, north of 79th Street on the West Side and north of 86th Street on the East Side. These two systems serve more than 100,000 homes apiece.¹⁰ The third company, CATV Enterprises, operates in the Riverdale section of the Bronx. It is viewed by the Bureau of Franchises as a stopgap company, which will be permitted to operate under a series of temporary authorizations until another company can be franchised to service the whole borough.¹¹

With a subscription to Teleprompter's or Manhattan Cable's "basic" service in New York City today, a subscriber gets all local VHF and UHF stations, "imported" signals from New Jersey and Pennsylvania, additional programming offered by the cable company on its origination channels, national program services distributed by satellite, programs produced by New York City, and access channels. (The access channels are required by the present New York City franchise contract,¹² in order to provide free or low-cost outlets for anyone wishing to make a statement or offer a performance.)¹³ For an additional fee, a subscriber can receive "premium" services, such as Home Box Office or Showtime, which offer first-run

movies on an unedited and uninterrupted basis, dramatic series, a few original productions (such as comedians' unedited routines), and sports events not usually offered on conventional television stations.

All three of the existing New York City franchisees received franchise contracts in 1970 as a result of various formal and informal procedures mandated by the City. The key participants in the process were the Bureau of Franchises, the Corporation Counsel, the Board of Estimate, and, of course, the franchisees themselves. A few interested citizens and rival cable companies participated to some extent, but the general public of New York City was not involved in any significant way. New York State did not regulate local franchise proceedings then.¹⁴ The Federal Communications Commission regulated cable television only minimally.¹⁵ Cable television thus first came to New York City through the activities of a relative handful of participants.

The next round of franchising activity occurred in 1978. Knickerbocker Communications Corporation was well on its way to securing a franchise for Queens, through the same basic process as its predecessors.¹⁶ In this case, however, Orth-O-Vision, a rival cable company, sued to enjoin the process after the Board of Estimate had approved the franchise.¹⁷ Essentially, Orth-O-Vision's action focused on the lack of local government and public participation in New York City's cable franchising process.¹⁸

The *Orth-O-Vision* litigation merely spotlighted a long-standing concern. In order to understand the current situation, it is necessary to review the growth of cable television regulation in New York City. This report therefore will discuss the past and present procedures utilized by New York City in granting cable franchises and in regulating franchisees. The pertinent federal and state jurisdiction and participation will be discussed where appropriate. Finally, the present status of local cable franchising procedures and regulation in the wake of the *Orth-O-Vision* litigation will be assessed. Since four of the City's five boroughs now are open for franchise bids, it is particularly important to understand the present state of franchising, its origins, and its future.