



DOCKET FILE COPY ORIGINAL
OFFICE OF THE COUNTY ATTORNEY
CITRUS COUNTY

RECEIVED

FEB - 9 1993

107 N. PARK AVENUE, Suite 8 • INVERNESS, FL 34450
(904) 637-9970
Fax 637-9975

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

LARRY M. HAAG
County Attorney

RICHARD Wm. WESCH
Assistant County Attorney

DOCKET FILE COPY ORIGINAL February 8, 1993

Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED
FEB 9 1993
FEDERAL COMMUNICATIONS COMMISSION

Re: Cable Television Rulemaking
Docket No.: 92-264
Ownership Limitations and Transfer Provisions

Dear Sir or Madam:

This office represents the Board of County Commissioners of Citrus County, Florida, which has a population of approximately 100,000 citizens of which roughly half are served by cable television.

Comment is sought, pursuant to this docket, to proposed regulations regarding ownership limitations and transfer provisions. Philosophically, over the years the Board of County Commissioners of Citrus County has attempted to foster, whenever possible, competition among cable companies. Citrus County currently has four cable companies providing service within the County, however, only two compete with respect to subscribers having a choice of cable companies; those companies being Telesat Cablevision, Inc. and CableVision of Central Florida (Time Warner). Since 1987 Telesat has over-built CableVision of Central Florida in at least two communities, Beverly Hills and the City of Inverness and surrounding unincorporated areas. The result of such competition has been to hold cable television prices down and an increase in the quality of technical service provided to cable customers by the means of better picture quality and availability of additional channels. Without competition CableVision of Central Florida, despite the existence of two other companies, would have a monopoly in roughly 95% of the geographic area of Citrus County serviced by cable television.

It is imperative that local franchise authorities maintain the ability to deny transfer of franchises or their assets from one company to another otherwise competition will be a myth and the franchising authority's sole remedy will be rate regulation which,

No. of Copies rec'd _____
List A B C D E

0

Federal Communications Commission
February 8, 1993
Page Two

by the terms of the new Cable Act, is limited to basic service. As stated in earlier comments to the Commission, this limited amount of regulatory authority is a hollow remedy for cable subscribers who have over the last ten years been gouged by cable companies and provided mediocre service.

Currently, there is a pending transfer in Citrus County in which Telesat would sell all of its assets to CableVision of Central Florida. Such a sale would totally eliminate competition in Citrus County among the four cable companies. My legal interpretation of the new Act is that local franchise authorities have the ability to deny a franchise transfer if in fact the effect of such transfer is an elimination of competition and the virtual creation of a monopoly.

We believe it is imperative that the Commission define what constitutes the sale of a franchise or cable television system. Currently, Telesat is attempting to use a ruse that it is merely selling the assets owned by Telesat in Citrus County to CableVision of Central Florida and not transferring the franchise and, therefore, any of the new provisions of the Cable Act which would empower Citrus County to prohibit such a transfer are not applicable. Also, I am sure they will argue that due to the fact that it is a sale of assets rather than a transfer of a franchise that pursuant to the County's existing cable ordinance that the County does not have the right to approve or disapprove such a transfer. I have attached hereto an exhibit marked Exhibit "A" which I incorporate herein which is Section 11 of Citrus County's Ordinance regulating licensing of cable systems (Ordinance No. 85-21). You will note that the first sentence of subparagraph A states:

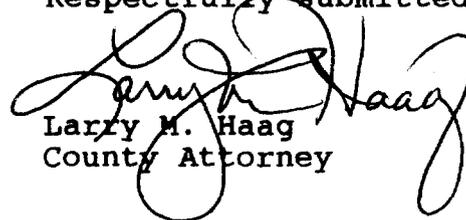
"a. A franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, passed to or vest in any person without the prior written consent of the County." (emphasis added)

It is the position of Citrus County that a sale of assets amounts to a sale of the franchise and that such a distinction is illusory. I believe it is imperative that the Federal Communications Commission address this issue by rule, otherwise local franchising authorities will be forced to litigate this issue individually throughout the United States as franchising authorities attempt to foster competition by eliminating the merger of cable companies into virtual monopolies, which are for the most part unregulated with respect to rates charged cable subscribers.

Federal Communications Commission
February 8, 1993
Page Three

Please consider these comments when rendering your decision
with respect to the rules regarding ownership and transfer.

Respectfully submitted,



Larry M. Haag
County Attorney

LMH:cac

Enclosure

EXHIBIT "A"

submitted by Grantee as part of its application, which standards are incorporated by reference in the license agreement. In addition, Grantee shall provide the County, upon request, with a written report of the results of any proof of compliance test conducted by Grantee. Grantee shall pay the costs incurred by the County for any technical assistance deemed necessary by the County for obtaining independent verification of technical compliance with all standards.

b. Additional Specifications. For any new license or license renewal granted under this Ordinance, Grantee shall maintain equipment capable of providing standby power for headend, transportation and trunk amplifiers for a minimum of four (4) hours; provided however, any Grantee having installed a standby power system prior to the effective date of this Ordinance shall be able to utilize said system until such time as it must be replaced, either due to damage or obsolescence.

Grantee shall at all times comply with:

- (1) National Electrical Safety Code (National Bureau of Standards);
- (2) National Electrical Code (National Bureau of Fire Underwriters);
- (3) Bell System Code of Pole Line Construction; and
- (4) Applicable FCC or other federal, state and local ordinances and regulations.

In any event, the system shall not endanger or interfere with the safety of persons or property in the license territory or other areas where the Grantee may have equipment located.

SECTION 11. TRANSFERS AND ASSIGNMENTS

a. A franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person without the prior written consent of the County. The proposed assignee must show technical ability, financial capability, legal qualifications and general character qualifications as determined by the County, and must agree to comply with all provisions of the license. County shall be deemed to have consented to a proposed transfer or assignment in the event its

refusal to consent is not communicated in writing to Grantee within eighty (80) days following receipt of written notice of the proposed transfer or assignment. Subject to subsections (b) through (g), nothing contained in the preceding sentences should be deemed to prevent a Grantee from entering into such arrangements as may be necessary to finance the construction, reconstruction and/or ongoing operations of a Grantee within the boundaries of Citrus County.

b. The Grantee shall promptly notify the County of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the Grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. Every change, transfer, or acquisition of control of the Grantee shall make the license subject to cancellation unless and until the County shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the County may inquire into the qualifications of the prospective controlling party and the Grantee shall assist the County in any such inquiry.

c. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of 10 percent of the voting interest of the Grantee.

d. The consent or approval of the Commissioners to any transfer of the license shall not constitute a waiver or release of the rights of the County in and to the streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of a license.

e. In any absence of extraordinary circumstances, the County will not approve any transfer or assignment of a franchise prior to substantial completion of construction of proposed system.

f. The Commissioners reserve the right of "first refusal" to purchase a cable system at the market value price, if and when it is placed on the market for sale.

g. In no event shall a transfer of ownership or control be approved without successor in interest becoming a signatory to the license agreement.

SECTION 12. SUBSCRIBER SERVICE RATES

a. Initial Rates. The Grantee shall establish initial rates for its services in accordance with the rates contained in Grantee's application for a license.

b. Authority to Regulate Rates. To the extent permitted by Federal and State law, the County may regulate the rates for basic cable service.

SECTION 13. PAYMENT OF LICENSE FEE

a. For the reason that the streets to be used by the Grantee in the operation of its system within the boundaries of the County are valuable public properties acquired and maintained by the County at great expense to its taxpayers, and that the grant to the Grantee to the said streets is a valuable property right without which the Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, and because the County will incur costs in regulating and administering the license, the Grantee shall pay to the County an amount equal to five percent (5%) of Grantee's gross annual revenue from all sources attributable to the operations of the Grantee within the confines of Citrus County.

b. The license fee and any other cost or penalties assessed shall be payable semi-annually. The Grantee shall file a complete and accurate verified statement of all collected gross revenue within the County during the period for which said semi-annual payment is made, and said payment shall be made to the County not later than sixty (60) days after the expiration of the period for which payment is due.

c. The County shall have the right to inspect the Grantee's income records and the right to audit and to recompute any amounts determined to be payable under this Ordinance;