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February 24, 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

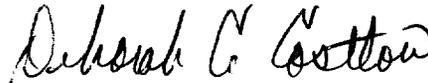
ORIGINAL

Re: Ex Parte Presentation in CS Dkt. No. 95-184

Dear Mr. Caton:

I am hereby submitting an original and two copies of this written *ex parte* submission on behalf of the Independent Cable & Telecommunications Association ("ICTA") in the above-referenced docket. Please file-stamp the marked copy and return it to my office with the messenger.

Sincerely,



Deborah C. Costlow

Attachment

cc: Chairman Reed E. Hundt
Commissioner James H. Quello
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Julius Genachowski
Jackie Chorney
Marsha MacBride
Suzanne Toller
Anita Wallgren
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Ex Parte Submission in CS Dkt. No. 95-184

ICTA Response To NCTA Proposal

I. NCTA's Attempt To Link The Location of The Demarcation Point To The Existence Of State Mandatory Access Statutes Has No Basis In The 1996 Act And Is Blatantly Protectionist.

- Congress did not provide authority in the 1996 Telecommunications Act for the Commission to construct a malleable regulatory framework for inside wiring under which the location of the demarcation point would vary from state-to-state depending upon whether a particular state has enacted a mandatory access statute. In the absence of any such Congressional authority, NCTA's "authorization" for the Commission to do so is ineffective.
- The proposal is simply an attempt by franchised operators to prevent the loss of subscribers that will result if inside wiring is made accessible in circumstances where they are not protected by a mandatory access statute. Franchised operators have long taken for granted their monopoly status and grown increasingly unresponsive to their subscribers. The proposed linkage is a transparent attempt to shield a market share built up in a protected environment from the free forces of competition.
- The inherently protectionist nature of the proposal is magnified by the fact that state mandatory access statutes uniformly discriminate in favor of franchised operators. In essence, the franchised operators are agreeing to even the scales by moving the demarcation point, but only in those circumstances where the scales are immediately tipped back in their favor by a mandatory access statute that empowers them and excludes their competitors. While NCTA characterizes certain of the state statutes as non-discriminatory, as outlined below, those statutes do in fact grant mandatory access rights exclusively to franchised operators.
 - **Connecticut** has enacted a mandatory access statute that applies exclusively to franchised cable operators. (See attached.) Although Connecticut has also granted access rights to "telecommunications providers," the definitions contained in that provision specifically exclude cable operators and other providers of one-way video altogether and thus it does nothing to equalize the position of franchised and non-franchised operators. (See attached.)
 - In **Minnesota**, only franchised operators have been given the right to force access to private property, despite the neutral tone in which the legislature

has cloaked the statute. The statute merely provides that, if and when the cable operator chooses to condemn private property -- a decision it alone can make -- the facilities installed must be capable of being used by other providers. (See attached.) Nothing in the statute allows other providers to force access themselves or to compel the franchised operator to exercise its mandatory access rights on their behalf.

- The **New York** legislature has granted mandatory access to “cable television companies” for the installation of “cable television facilities.” (See attached.) In the New York Public Service Law, the term “cable television companies” refers to entities that use public rights-of-way and are therefore subject to the full range of regulatory requirements set forth in Article 11 of that statutory compilation. (NY CLS Pub Ser § 211.) These include the requirement that the companies obtain a municipal franchise (NY CLS Pub Ser § 219), make payments based upon gross receipts to support the public service commission (NY CLS Pub Ser § 217) and conform their rates to a certain structure (NY CLS Pub Ser § 225). States are undeniably preempted from engaging in this type of regulation of private video service providers such as SMATV, DBS and MMDS operators. Thus, the term “cable television companies” cannot include such entities, despite what an isolated reading of the statutory definition might lead one to believe. Moreover, a representative of the New York State Public Service Commission, the body responsible for the enforcement of these regulations, unambiguously confirmed to ICTA that the mandatory access statute applies only to franchised operators and excludes other providers.
- The **New Jersey** statute unquestionably provides the right of mandatory access solely to franchised operators. As in New York, key terminology relied upon in the mandatory access provision (“cable television service”) is used throughout the code in delineating franchise and other regulatory requirements to which alternative providers clearly are not subject. Therefore the provision cannot be construed to extend access rights to these entities. Moreover, the New Jersey Supreme Court has read the statute to exclude SMATV providers and considers its purpose to be the promotion of the franchised cable industry in New Jersey. NYT Cable v. Homestead at Mansfield, 543 A.2d 10, 15-16, 27-28 (N.J. 1988).
- In **Ohio**, “any company organized at any time to transact a telegraph, telephone, or communications business” possesses eminent domain power. (See attached.) In Cablevision of the Midwest, Inc. v. Gross, 639 N.E.2d 1154 (Ohio 1994), the Ohio Supreme Court held that “cable television systems” fall within the term “communications business” and thus enjoy eminent domain authority under the statute. The term “cable television

system” excludes “any ... facility that serves or will serve only subscribers in one or more multiple unit dwellings under common ownership, control, or management.” (See attached.) A SMATV provider will almost always fall within the exclusion, not the definition. Thus, in the absence of any case law indicating otherwise, one cannot say that the typical alternative provider operates a "cable television system" such that it constitutes a “communications business” enjoying a right of mandatory access under the statute. At the very least, the Ohio statute is ambiguous regarding what entities receive the power of eminent domain, and the far stronger argument is that it discriminates in favor of franchised operators by excluding alternative providers.

- The call for compensation and transition measures prior to implementation of the proposal is a further attempt to delay relocation of the demarcation point and protect the market dominance of franchised operators.
 - The compensation provisions applied in the single-family home context could just as easily be applied to MDUs. Indeed, NCTA has declined to offer any reason why these proven measures would not be effective in this context or to put forth alternative provisions for discussion.
 - There is no burden or affirmative obligation placed on franchised operators by movement of the demarcation point and thus no need for any transition mechanisms. They must simply refrain from interfering with their competitors as those competitors assert their newly-won access rights.

II. Perpetual Contracts.

A. NCTA's Proposal For The Treatment Of Perpetual Contracts Would Not Mitigate The Anti-Competitive Effects Of These Contracts And Is Unworkable In Any Event.

- NCTA's acquiescence to the abolition of perpetual exclusive contracts in mandatory access states is an empty gesture. Franchised operators have no need for perpetual contracts in such jurisdictions since, by statute, they already possess the power to force access to private property unrestrained by any durational provision.
- The proposal would continue to allow perpetual *non-exclusive* contracts. As explained in ICTA's pleadings, due to the small subscriber base at the typical MDU, private cable operators require some period of exclusivity in order to ensure an adequate return on their investment at a particular MDU and to

protect against predatory practices during the recoupment phase. If they are foreclosed in perpetuity from obtaining the exclusivity necessary to initiate operations, these potential competitors will never challenge incumbents and the market will never be re-energized by competition among providers for the right to serve properties as existing contracts expire.

- Permitting contracts with a duration linked to the franchise term would defeat the purpose of prohibiting perpetual contracts in the first place.
 - The initial term of a franchise is often as long as 25 years and franchised operators will inevitably attempt to expand the duration of their exclusive contracts beyond even that period by arguing that they should extend for renewals of the franchise as well. Thus, even if not technically perpetual, contracts tied to the franchise term will foreclose competition far into the foreseeable future, becoming *de facto* perpetual contracts.
 - If these contracts are allowed to flourish, the inordinate postponement of the right to compete would result in the practical denial of that right for many new entrants who would be unable to accumulate a viable subscriber base to sustain their operations during this period.
 - The proviso that the Commission must protect franchised operators who are near the end of a franchise term, as well as preserve "the legitimate business expectations" of any other franchised operator, would make termination even more uncertain. The duration of franchised cable contracts would become the subject of endless debate under NCTA's proposal since virtually all franchised operators would see fit to bemoan the proximity of the expiration of their franchise as well as the injury to their business expectations -- despite the fact that their past longevity on the property has resulted in full recoupment already. Their efforts to protect their contracts would become the source of never-ending litigation and the market would be deprived of any certainty regarding the termination of these contracts.

B. The Commission Should Require That Service Contracts Terminate Upon A Date Certain.

- Rather than adopt complicated yet ineffectual rules regarding the duration of service agreements, the Commission should simply abolish perpetual access contracts categorically through a "fresh look" mechanism and allow parties to freely negotiate a durational provision, with the only limitation being that

the provision provide for termination on a date certain.

- Regardless of how the Commission ultimately decides to treat perpetual contracts and those tied to the franchise term, the duration of contracts entered into between property owners and non-franchised operators should in no case be tied to the remainder of the local franchisee's term.
 - Such a linkage has no rational basis and simply reflects an outdated, franchise-centered view of the video services marketplace. A contract between a property owner and a private operator should simply be governed by the terms negotiated by the parties and terminate upon a mutually agreed-upon date certain.
 - Under NCTA's proposal, these parties could negotiate a long term contract only to find that it must be terminated after two years because that is when the franchise of the local franchisee, a total stranger to the contract, expires. Such a result is contrary to the most basic principles of contract law.

III. Movement Of The Demarcation Point To That Place At Which The Wiring Is First Accessible Would Do Nothing To Promote Competition.

- In most instances, inside wiring would become "accessible" in the literal sense immediately outside the wall of the dwelling unit. A potential competitor wishing to serve residents would still be forced to install its wires throughout the entire building in order to connect these points.
- As explained in ICTA's pleadings, for aesthetic reasons and out of concern over possible damage to their buildings, property owners rarely permit installation of a second set of wires. Thus, potential competitors would remain effectively excluded and the very purpose of moving the demarcation point in the first place, to promote competition from new entrants, would be soundly defeated.
- If competition is truly to be facilitated, the demarcation point must be moved to a location where a new entrant has *competitive* access to the inside wiring, *i.e.*, access to the inside wiring in the real world and not just in some abstract technical model. As ICTA has set forth in detail in its pleadings, it believes that competitive access can best be ensured by moving the demarcation point for MDUs to that point where the wire is dedicated to an individual rental unit.

IV. The Commission Should Act Now To Preempt Discriminatory State Mandatory Access Laws In Order To Avoid A State-By-State Battle On This Issue And The Resulting Waste Of Resources.

- While the Commission is deliberating the issues involved in this proceeding, franchised cable operators are aggressively lobbying state legislatures for the passage of mandatory access statutes that discriminate against alternative providers of video services.
- In the last six months alone, ICTA has been involved in efforts in Arkansas, Colorado, Indiana and Maryland to educate legislators on the issues raised by mandatory access bills introduced in those states. While the Colorado legislature has declined to enact a mandatory access statute at this time, such provisions are still very much alive in the other state houses and it is likely that additional states will take up consideration of similar bills.
- If the Commission does not preempt such statutes, competitors will be denied the protection of a limited period of exclusivity and driven out of the market on a state-by-state basis -- since the franchised operator can force an overbuild. Meanwhile, franchised cable operators are not barred in those same states from entering into exclusive contracts. Also, alternative providers will be forced to lobby against these provisions as they spring up in various states, diverting scarce resources which could better be utilized to upgrade their services and strengthen their foothold in the market. For these reasons, the Commission should preempt state mandatory access laws and bring national uniformity to this critical access issue.

V. Bulk Billing Arrangements Are Not A Subject Of This Proceeding.

- Bulk billing arrangements are one of the issues being dealt with in the Cable Act Reform rulemaking, CS Dkt. No. 96-85, and it would be inappropriate for the Commission to take action with respect to such arrangements in the present proceeding.

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GENERAL STATUTES OF CONNECTICUT

*** THIS DOCUMENT IS CURRENT THROUGH ALL 1994 LEGISLATION ***

TITLE 16. PUBLIC SERVICE COMPANIES
CHAPTER 289. DEPARTMENT OF PUBLIC UTILITY CONTROL: COMMUNITY ANTENNA
TELEVISION
SYSTEMS

Conn. Gen. Stat. § 16-333a (1994)

§ 16-333a. Multiunit **residential buildings** service and wiring. Right to use antenna. Regulations for owner compensation. Civil penalty

(a) No owner of any multiunit **residential building** shall demand or accept payment, in any form, except as provided in subsection (e) of this section, in exchange for permitting **community antenna** television service on or within his property or premises, or discriminate in rental charges or the provision of service between **tenants** who receive such service and those who do not, provided such owner shall not be required to bear any cost for the installation or provision of such service.

(b) An owner of a multiunit **residential building** shall permit wiring to provide **community antenna** television service in such building provided that: (1) A **tenant** of such building requests **community antenna** television services; (2) the entire cost of such wiring is assumed by the **community antenna** television company; (3) the **community antenna** television company indemnifies and holds harmless the owner for any damages caused by such wiring; and (4) the **community antenna** television company complies with all rules and regulations of the department of public utility control pertaining to such wiring.

(c) An owner of a multiunit **residential building** in the process of construction shall prior to completion of construction of such building permit prewiring to provide **community antenna** television services in such building provided that: (1) The **community antenna** television company complies with all the provisions of subdivisions (2), (3) and (4) of subsection (b) of this section and subsection (e) of this section; and (2) all wiring other than that to be directly connected to the terminal of a **community antenna** television subscriber shall be concealed within the walls of such building. The department shall adopt regulations, in accordance with the provisions of chapter 54, which shall set forth terms which may be included, and terms which shall not be included, in any contract to be entered into by the owner of a multiunit **residential building** and a **community antenna** television company concerning such wiring. No **community antenna** television company shall present to an owner of an occupied building for review or for signature such a contract which contains a term prohibited from inclusion in such a contract by regulations adopted hereunder.

(d) No **community antenna** television company may enter into any agreement with the owners, lessees or persons controlling or managing multiunit **residential buildings** serviced by such company, or commit or permit any act, that would have



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the effect, directly or indirectly, of diminishing or interfering with existing rights of any tenant or other occupant of such dwelling to use or avail himself of master or individual antenna equipment.

§

(e) The department shall adopt regulations in accordance with the provisions of chapter 54, authorizing community antenna television companies, upon application by the owner of a multiunit residential building and approval by the department, to reasonably compensate the owner for any taking of property associated with the installation of wiring and ancillary facilities for the provision of community antenna television service. The regulations may include, without limitation:

(1) Establishment of a procedure under which owners may petition the department for additional compensation;

(2) Authorization for owners and community antenna television companies to negotiate settlement agreements regarding the amount of such compensation, which agreements shall be subject to the department's approval;

(3) Establishment of criteria for determining any additional compensation that may be due;

(4) Establishment of a schedule or schedules of such compensation under specified circumstances; and

(5) Establishment of application fees, or a schedule of fees, for applications under this subsection.

(f) Nothing in subsection (e) shall preclude a community antenna television company from installing community antenna television equipment or facilities in a multiunit residential building prior to the department's determination of reasonable compensation.

(g) Any determination by the department under subsection (e) regarding the amount of compensation to which an owner is entitled or approval of a settlement agreement may be appealed by an aggrieved party in accordance with the provisions of section 4-183.

(h) The provisions of this section shall also apply to trailer parks, mobile manufactured home parks, nursing homes, hospitals and condominium associations.

(i) Any person, firm or corporation which the department of public utility control determines, after notice and opportunity for a hearing as provided in section 16-41, to have failed to comply with any provision of subsections (a) to (d), inclusive, or subsection (h) of this section shall pay to the state a civil penalty of not more than one thousand dollars for each day following the issuance of a final order by the department pursuant to section 16-41 that the person, firm or corporation fails to comply with said subsections.

HISTORY: P.A. 75-301, S. 1, 3; P.A. 76-201; P.A. 77-614, S. 162, 610; P.A. 80-482, S. 163, 348; June Sp. Sess. P.A. 83-3, S. 1; P.A. 89-281, S. 1; P.A. 93-53, S. 1, 3; P.A. 94-106, S. 2.

NOTES:



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GENERAL STATUTES OF CONNECTICUT

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TITLE 16. PUBLIC SERVICE COMPANIES
CHAPTER 277. DEPARTMENT OF PUBLIC UTILITY CONTROL. OFFICE OF CONSUMER
COUNSEL

Conn. Gen. Stat. § 16-1 (1994)

STATUS: CONSULT SLIP LAWS CITED BELOW FOR RECENT CHANGES TO THIS DOCUMENT

<=1> LEXSEE 1995 Ct. ALS 79 -- See section 47.

§ 16-1. Definitions

(a) Terms used in this title and in chapters 244, 244a, 244b, 245, 245a and 245b* shall be construed as follows, unless another meaning is expressed or is clearly apparent from the language or context:

(1) "Authority" means the Public Utilities Control Authority and "department" means the department of public utility control;

(2) "Commissioner" means a member of said authority;

(3) "Commissioner of transportation" means the commissioner of transportation appointed under section 13b-3;

(4) "Public service company" includes electric, gas, telephone, telegraph, pipeline, sewage, water and community antenna television companies, owning, leasing, maintaining, operating, managing or controlling plants or parts of plants or equipment, and all express companies having special privileges on railroads within this state, but shall not include telegraph company functions concerning intrastate money order service, towns, cities, boroughs, any municipal corporation or department thereof, whether separately incorporated or not, or a private power producer, as defined in section 16-243b;

(5) "Plant" includes all real estate, buildings, tracks, pipes, mains, poles, wires and other fixed or stationary construction and equipment, wherever located, used in the conduct of the business of the company;

(6) "Railroad company" includes every corporation, company, association, joint stock association, partnership or person, or lessee thereof, owning, leasing, maintaining, operating, managing or controlling any railroad, or any cars or other equipment employed thereon or in connection therewith, for public or general use within this state;

(7) "Street railway company" includes every corporation, company, association, joint stock association, partnership or person, or lessee thereof, owning, leasing, maintaining, operating, managing or controlling any street railway, or any cars or other equipment employed thereon or in connection therewith, for public or general use within this state;



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between points within this state and points outside this state;

(21) "Cogeneration technology" means the use for the generation of electricity of exhaust steam, waste steam, heat or resultant energy from an industrial, commercial or manufacturing plant or process, or the use of exhaust steam, waste steam or heat from a thermal power plant for an industrial, commercial or manufacturing plant or process, but shall not include steam or heat developed solely for electrical power generation;

(22) "Renewable fuel resources" means energy derived from wind, hydro power, biomass or other solar resources;

(23) "Telephone company" means a telecommunications company that provides one or more noncompetitive or emerging competitive services, as defined in section 16-247a;

(24) "Domestic telephone company" includes any telephone company which has been chartered by or organized or constituted within or under the laws of this state;

(25) "Telecommunications company" means a corporation, company, association, joint stock association, partnership or person, or a lessee thereof, which provides telecommunications service, as defined in section 16-247a, within the state, but shall not mean a person, firm, corporation, company, association, joint stock association or partnership, or a lessee thereof, which provides only (A) private telecommunications service, as defined in section 16-247a, (B) the one-way transmission of video programming or other programming services to subscribers, (C) subscriber interaction, if any, which is required for the selection of such video programming or other programming services, (D) the two-way transmission of educational or instructional programming to a public or private elementary or secondary school, or a public or independent institution of higher education, as required by the department pursuant to a community antenna television company franchise agreement, or provided pursuant to a contract with such a school or institution which contract has been filed with the department, or (E) a combination of the services set forth in subparagraphs (B) to (D), inclusive, of this subdivision.

(b) Notwithstanding any provision of the general statutes to the contrary, as used in the general statutes, the terms "utility", "public utility" and "public service company" shall be deemed to include a community antenna television company, except (1) as otherwise provided in sections 16-8, 16-27, 16-28 and 16-43, (2) that no provision of the general statutes, including but not limited to, the provisions of sections 16-6b and 16-19, shall subject a community antenna television company to regulation as a common carrier or utility by reason of providing community antenna television service, other than noncable communications service, as provided in Subchapter V-A of Chapter 5 of the Communications Act of 1934, 47 USC 521 et seq., as amended, and (3) that no provision of the general statutes, including but not limited to, sections 16-6b and 16-19, shall apply to community antenna television companies to the extent any such provision is preempted pursuant to any other provision of the Communications Act of 1934, 47 USC 151 et seq., as amended, any other federal act or any regulation adopted thereunder.

HISTORY: 1949 Rev., S. 5390; February, 1965, P.A. 175, S. 1; 1967, P.A. 546, S.



MINN. STAT. § 238.23 (1996) printed in FULL format.

MINNESOTA STATUTES 1996

*** CURRENT THROUGH THE 1996 SUPPLEMENT ***

*** (1996 REGULAR SESSION) ***

Telecommunications
CHAPTER 238 CABLE COMMUNICATIONS

Minn. Stat. § 238.23 (1996)

238.23 Access required

Subdivision 1. Provision of access. A property owner or other person controlling access shall provide a cable communications company access to the property owner's multiple dwelling complex. The access provided must be perpetual and freely transferable by one cable communications company to another. A cable communications company granted access, and its successors in interest, must fully comply with sections 238.22 to 238.27.

Subd. 2. Resident's rights. The intent of sections 238.22 to 238.27 is to give residents the freedom to choose among competing cable communications services and nothing in sections 238.22 to 238.27 shall be interpreted to require residents to hook up or subscribe to any services offered by any cable communications company or alternative provider of cable communications services.

HISTORY:

1983 c 329 s 4



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MINNESOTA STATUTES 1996

*** CURRENT THROUGH THE 1996 SUPPLEMENT ***

*** (1996 REGULAR SESSION) ***

Telecommunications
CHAPTER 238 CABLE COMMUNICATIONS

Minn. Stat. § 238.241 (1996)

238.241 Conditions for access by alternative providers

Subdivision 1. Channel capacity. Cable companies granted access to a multiple dwelling complex under section 238.25 shall provide equipment with sufficient channel capacity to be used by alternative providers of television programming or cable communications services.

Subd. 2. Technical plan approval. The cable communications company shall determine the technical plan best suited for providing the necessary channel capacity sufficient to allow access to other providers. The plan must be submitted to the property owner for approval. The owner's approval may not be unreasonably withheld. No additional compensation for evaluation of the plan may be paid or given to the property owner over and above that permitted under section 238.24, subdivision 8.

Subd. 3. Duplicate connections. The cable communications company is not required to provide equipment for connecting more than one television receiver in one dwelling unit within the multiple dwelling complex. However, the company may provide duplicate connections at its discretion.

HISTORY:

1985 c 285 s 34



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*** THIS SECTION IS CURRENT THROUGH CH. 599, 08/08/96 ***

PUBLIC SERVICE LAW

ARTICLE 11 [Eff Jan 1, 1996] Provisions Relating to Cable Television
Companies

NY CLS Pub Ser § 228 (1996)

§ 228. [Eff Jan 1, 1996] Landlord-tenant relationship

1. No landlord shall

(a) interfere with the installation of **cable television** facilities upon his property or premises, except that a **landlord** may require:

(1) that the installation of **cable television** facilities conform to such reasonable conditions as are necessary to protect the safety, functioning and appearance of the premises, and the convenience and well being of other **tenants**;

(2) that the **cable television** company or the **tenant** or a combination thereof bear the entire cost of the installation, operation or removal of such facilities; and

(3) that the **cable television** company agree to indemnify the **landlord** for any damage caused by the installation, operation or removal of such facilities.

(b) demand or accept payment from any **tenant**, in any form, in exchange for permitting **cable television** service on or within his property or premises, or from any **cable television** company in exchange therefor in excess of any amount which the commission shall, by regulation, determine to be reasonable; or

(c) discriminate in rental charges or otherwise, between **tenants** who receive **cable television** service and those who do not.

2. Rental agreements and leases executed prior to January first, nineteen hundred seventy-three may be enforced notwithstanding this section.

3. No **cable television** company may enter into any agreement with the owners, lessees or persons controlling or managing buildings served by a **cable television** company, or do or permit any act, that would have the effect, directly or indirectly of diminishing or interfering with existing rights of any **tenant** or other occupant of such building to use or avail himself of master or individual antenna equipment.

HISTORY:

Add, L 1995, ch 83, § 122, eff Jan 1, 1996 (see 1995 note under Article 11).



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*** THIS SECTION IS CURRENT THROUGH CH. 599, 08/08/96 ***

PUBLIC SERVICE LAW
ARTICLE 11 [Eff Jan 1, 1996] Provisions Relating to Cable Television
Companies

NY CLS Pub Ser § 212 (1996)

§ 212. [Eff Jan 1, 1996] Definitions

The words and phrases used in this article shall have the following meanings unless a different meaning clearly appears in the context.

1. "Cable television company," shall mean any person owning, controlling, operating, managing or leasing one or more cable television systems within the state.

2. "Cable television system" shall mean any system which operates for hire the service of receiving and amplifying programs broadcast by one or more television or radio stations or any other programs originated by a cable television company or by any other party, and distributing such programs by wire, cable, microwave or other means, whether such means are owned or leased, to persons in one or more municipalities who subscribe to such service. Such definition does not include: (a) any system which serves fewer than fifty subscribers; or (b) any master antenna television system.

3. "Franchise" shall mean and include any authorization granted by a municipality in terms of a franchise, privilege, permit, license or other municipal authorization to construct, operate, maintain, or manage a cable television system in any municipality.

4. "Gross annual receipts" shall mean any and all compensation received directly or indirectly by a cable television company from its operations within the state, including but not limited to sums received from subscribers or users in payment for programs received and/or transmitted, advertising and carrier service revenue and any other moneys that constitute income in accordance with the system of accounts approved by the commission.

Gross annual receipts shall not include any taxes on services furnished by a cable television company imposed directly on any subscriber or user by any municipality, state, or other governmental unit and collected by the company for such governmental unit.

5. "Master antenna television system" shall mean any system which serves only the residents of one or more apartment dwellings under common ownership, control or management, unless such system uses facilities located in a public right of way to provide service.

6. "Municipality" shall mean any village, town, city or county not wholly



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contained within a city in the state.

7. "State agency" shall mean any office, department, board, commission, bureau, division, public corporation, agency or instrumentality of the state.

§

8. "Person" shall mean any individual, trustee, partnership, association, corporation or other legal entity.

9. "Program" shall mean any broadcast type program, signal, message, graphics, data, or communication content service.

10. "Downgrade" shall mean a change in service initiated by the subscriber to a less expensive service tier than the one currently subscribed to.

11. "Network" shall mean a group of programs distributed, packaged, promoted or sold to subscribers as the offering of a single entity, including but not limited to, a channel or station.

12. "Service tier" shall mean a category of cable television services or other services provided by a cable television company and for which a rate or fee is charged by the cable television company, including, but not limited to, basic services, premium networks or services, recurring pay-per-view services and other categories of cable services for which there are additional charges.

13. "Network change" shall mean the removal of a network from a service tier whether or not added to another tier or a substantial alteration of the character of a network by a cable television company or an affiliate it controls. Notwithstanding the foregoing, the addition of a network to a service tier for promotional purposes where such purpose is clearly disclosed to the subscriber and is for a period of time not exceeding thirty-one days, the subsequent deletion of such network after the termination of the promotion, shall not be a "network change".

14. "Significant programming change" shall mean the removal or alteration of recurring programming which materially changes the quality or level of programming on a network, provided however, such term shall not include deletions of programs mandated by the regulations of the federal communications commission, nor shall it include deletions of programs that are distributed by the cable television company in lieu of such programs deleted pursuant to such regulations of the federal communications commission.

HISTORY:

Add, L 1995, ch 83, § 122, eff Jan 1, 1996 (see 1995 note under Article 11).



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TITLE XLIX [49] PUBLIC UTILITIES
CHAPTER 4931: COMPANIES -- TELEGRAPH; TELEPHONE

ORC Ann. 4931.11 (Anderson 1996)

§ 4931.11 Powers and restrictions.

Any company organized at any time to transact a telegraph, telephone, or communications business may construct, reconstruct, own, use, lease, operate, maintain, and improve communications systems for the transmission of voices, sounds, writings, signs, signals, pictures, visions, images, or other forms of intelligence, as public utility services, by means of wire, cable, radio, radio relay, or other facilities, methods, or media. Any such company has the powers and is subject to the restrictions prescribed in sections 4931.01 to 4931.23, inclusive, of the Revised Code, for telegraph or telephone companies.

HISTORY: RS § 3471; GC § 9191; 123 v 444; 124 v 131; Bureau of Code Revision. Eff 10-1-53.

NOTES:

RESEARCH AIDS

County utilities service tax:

O-Jur3d: Tax § 1216

Right to use public lands, roads, or highways:

O-Jur3d: Telecom §§ 3, 12, 13, 15, 18, 25, 27, 38, 40, 41, 45, 48, 67, 148

Am-Jur2d: Telecom § 16

C.J.S.: Tel § 23

Telephone and telegraph companies' power of eminent domain:

O-Jur3d: Em Dom §§ 20, 25, 66-68, 217

Am-Jur2d: Telecom § 16

C.J.S.: Tel § 22

LAW REVIEW

First amendment constraint on the regulation of telephone pornography. Comment. 55 *CinLRev* 237 (1986).

Municipal corporations and the police power in Ohio. George D. Vaubel. 29 *OSLJ* 29 (1968).

Municipal home rule in Ohio: Municipal power to procure public utility services. George D. Vaubel. 3 *ONorthLRev* 1382 (1976).

Municipal home rule in Ohio: Police regulations-express state denial of authority as a general law. George D. Vaubel. 3 *ONorthLRev* 769 (1976).



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TITLE V [5] TOWNSHIPS
CHAPTER 505: TRUSTEES
[CABLE TELEVISION CONTRACTS]

ORC Ann. 505.90 (Anderson 1996)

§ 505.90 Definitions.

As used in sections 505.90 to 505.92 of the Revised Code:

(A) "Cable television system" means a nonbroadcast facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment, under common ownership and control, that distributes or is designed to distribute to subscribers the signals of one or more television broadcast stations, but such term does not include any such facility that serves or will serve only subscribers in one or more multiple unit dwellings under common ownership, control, or management.

(B) "Cable television company" means any person owning, controlling, operating, or managing or proposing to establish, control, operate, or manage a cable television system, but does not include a telephone, telegraph, or electric utility company otherwise regulated by the public utilities commission where the company merely leases or rents or otherwise provides to a cable television company wires, conduits, cables, or pole space used in the distribution of television signals to or toward subscribers or customers.

HISTORY: 138 v H 352. Eff 10-9-79.

NOTES:

CROSS-REFERENCES TO RELATED SECTIONS

Owner of underground utility facility defined, RC § 153.64.

RESEARCH AIDS

Cable television contracts:

- O-Jur3d: Telecom §§ 155, 156
- Am-Jur2d: Telecom §§ 185, 186
- C.J.S.: Tel & Rad § 316.2

CASE NOTES AND OAG

1. (1994) A cable television system is a communications business under RC § 4931.11: Cablevision of the Midwest, Inc. v. Gross, 70 OS3d 541, 639 NE2d 1154.

