

## Cato Institute Policy Analysis No. 34: Cable Television: An Unnatural Monopoly

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### Executive Summary

The invention of print...made it easier to manipulate public opinion, and the film and the radio carried the process further. With the development of television, and the technical advance which it made possible...the possibility of enforcing not only complete obedience to the will of the state, but complete uniformity of opinion on all subjects, now existed for the first time.

--George Orwell, 1984

It is 1984. Many of the more horrific Orwellian prophecies fortunately have not come to pass. Nonetheless, ours is an enlarged government, taking unto itself increasing functions that were once left to voluntary interaction among individuals.

In tribute to Orwell's book, consider the following scenario, which, if it occurred, could sow the seeds for the world he envisioned. In this scenario, our benevolent city fathers, concerned about the trend toward one-newspaper cities, decide that the increasingly monopolistic tendencies of newspapers in local markets necessitate governmental action to protect the public interest. Assuming that newspapers are natural monopolies, the city must act to protect consumers against such inevitable effects as price gouging, one-sided news, and lack of public access to the medium. Because newspaper boxes, trucks, and carriers use the city streets, the local government concludes that it has jurisdiction to take whatever action it deems necessary.

The city quickly realizes that if it supplants the marketplace and controls the mechanism that determines which company will enjoy the local news monopoly, it can extract enormous concessions in return from that company. It promotes an intense bidding war for the franchise, the winner of which must be not only wealthy enough to meet the costly requirements demanded by the city but possessed of sufficient political know-how to appeal to the city's decision makers as well.

The competition is fierce. Each bidder spends \$1 million to curry favor with the city, staging media events, gathering support from prominent community figures, and wining and dining the decision makers. Finally a winner is chosen to serve the community.

The franchise does not come cheaply, for the winning bidder must pay millions of dollars in tribute to the city, both now at the outset and then throughout the life of the franchise. And for the first time in U. S. history, a newspaper must cede editorial control to government officials. It must publish verbatim transcripts of all city council meetings, make available and relinquish content control over access pages for specified special-interest groups, and provide training centers to teach people how to write newspaper articles. Any changes in the initial editorial format are subject

to city approval, as are transfers of newspaper ownership. Free newspapers must be delivered to all city offices. The price of the newspaper -- 22 percent higher than before owing to the costly giveaways -- is controlled by the city as well. The newspaper is guaranteed a minimum rate of return. The primary quid pro quo, however, is a guarantee from the city that the newspaper will be insulated from all competition for at least 15 years.

Of course, we know that this scenario is ludicrous. It would shock our consciences to allow government control of our newspapers to this extent. Our Constitution, through the First Amendment, forbids government interference with the press; it entrusts regulation of the press to the marketplace and allows the people to determine their own interest. As Thomas Jefferson explained, in the area of information exchange, it is "better to trust the public judgment, rather than the magistrate...And hitherto the public has performed that office with wonderful correctness."

Aside from constitutional prohibitions against government interference with the free flow of information, this scenario is also improbable because of its faulty economic premises. We know that newspapers are not natural monopolies. In many communities, two or more daily newspapers thrive. Even in one-newspaper cities, competition is provided by small specialized newspapers and by alternative media. Free entry into newspaper markets furnishes omnipresent competitive pressures. And technology has made possible national daily newspapers that provide competition throughout the country. Far from constituting a natural monopoly, the news industry is vigorously competitive, offering diverse sources of information as a by-product of our commitment to a free market in the area of information exchange.

However, while wholesale government control over the press doubtless would cause public outrage, we have hardly blinked an eye over the application of such an Orwellian scenario to the newspaper of the future -- cable television. This dynamic medium has been subject to the most pervasive regulation at every level of government of any medium in American communications history. Yet no stronger economic rationale exists for government regulation of cable than of newspapers. Given our metamorphosis from print to electronic media as the mainstay of our information society, the implications of continued government control over cable are ominous indeed. As Ithiel de Sola Pool has declared, "The issue of the handling of the electronic media is the salient free speech problem for this decade." [1]

### **The Vast Promise of Cable**

Cable television has grown rapidly from its humble beginnings in the 1940s as a means to bring distant television signals to viewers with poor over-the-air reception. Cable systems and their myriad offerings now serve 35 percent of American television households -- a total of 25 million subscribers -- and should achieve 62 percent penetration by 1990. [2]

Cable's greatest technological achievement has been in overcoming spectrum scarcity, the physical limitation that has provided the legal basis for broadcast media regulation. Cable has potentially unlimited channel capacity, thus providing opportunities for anyone with the requisite resources to use the system. Its most revolutionary aspect is its interactive (two-way) capacity, which facilitates instantaneous viewer response. Thus, in addition to its almost infinite entertainment and information possibilities, cable can be used for polling, voting, home banking, consumer services, education, home security, meter reading, computer interaction, and personal communications. It will enable us to become more self-sufficient by conducting more of our affairs at home, while fostering expanded opportunities for voluntary interpersonal contact. As Ralph Lee Smith concludes in *The Wired Nation*, "In short, every home and office can contain a communications center of a breadth and flexibility to influence every aspect of private and community life." [3]

The reality of this breathtaking potential is inhibited, however, by the long history of extensive regulation at the federal, state, and local levels. Between 1966 and 1975, the Federal Communications Commission (FCC), prompted by complaints of unfair competition from competing media, brought cable development almost to a standstill. Since 1975, a series of court decisions and shifting FCC policies have removed much of the federal regulatory burden, resulting in enormous technological advances and increased availability. The greatest threat to cable's potential now is at the local level, through the franchise process and the countless restraints and regulations it sustains.

### **Cable as a "Natural Monopoly"**

Nearly every community in the United States allows only a single cable company to operate within its borders. Since the Boulder decision [4] in which the U.S. Supreme Court held that municipalities may be subject to antitrust liability for anticompetitive acts, most cable franchises have been nominally nonexclusive but in fact do operate to preclude all competitors. The legal rationale for municipal regulation is that cable uses city-owned streets and rights-of-way; the economic rationale is the assumption that cable is a "natural monopoly."

The theory of natural monopoly holds that "because of structural conditions that exist in certain industries, competition between firms cannot endure; and whenever these conditions exist, it is inevitable that only one firm will survive." Thus, regulation is necessary to dilute the ill-effects of the monopoly.[5] Those who assert that cable television is a natural monopoly focus on its economies of scale; that is, its large fixed costs whose duplication by multiple companies would be inefficient and wasteful. Thus, competitive entry into the market should be proscribed because it is bound to be destructive.

Most natural monopolies turn out to be self-fulfilling prophecies. Once a governmental entity has determined that a certain activity is a natural monopoly, it is within its power to so decree by limiting entry into the market to a single producer. Such is the case with cable television.

The typical municipal government will not permit wiring for cable television until it has solicited bids through issuance of a Request for Proposals (RFP), which establishes minimum prerequisites for all bidders (such as channel capacity and allocation, community access, and construction requirements). The bidders tacitly understand that they are bidding for the exclusive right to serve the community, and base their proposals on an expectation of monopoly profits. After submitting proposals, the bidders battle one another through the use of such weapons as cocktail parties, media campaigns, and prominent community advocates known in the industry as "rent-a-citizens." The RFP process itself effectively excludes all but a few companies from offering services to potential subscribers, in that most companies do not have the financial backing to meet the city's articulated prerequisites or to engage in the political gamesmanship involved in nearly every contemporary franchise contest.

The Denver franchise, awarded in 1982, provides an example of this process. Of 53 companies expressing an interest in serving Denver's citizens, only 3 submitted proposals. Each of the bidders spent approximately \$1 million in the political contest to win the franchise.[6] The massive regulatory scheme imposed on the winner is embodied in a permit and contract of over 100 pages that incorporates by reference a four-volume proposal. Among other requirements, the franchisee must

- pay 5 percent of its annual gross revenues as a franchise fee, plus an additional 2 percent for community programming;
- defray the city's expenses for the RFP process (\$80,000);
- provide a \$1 million construction bond and a \$100,000 letter of credit;
- grant \$1.5 million in loans and capital to small businesses and minority groups;
- wire the entire city according to a fixed construction schedule based on political rather than practical considerations;
- agree to pay \$1,000 penalty per day for franchise violations;
- submit to rate regulation;

- allow the city to veto programming changes;
- set aside all or part of 22 channels for programming access, and cede editorial control over them !
- build studios and other facilities for access to selected special-interest groups at a cost of \$7.34 million; and
- provide an emergency override system that enables city officials to turn on subscribers' sets, adjust the volume, and broadcast "emergency" messages into their homes at any hour of the day or night.

In exchange, the franchisee receives a de facto exclusive 15-year franchise and is insulated from some of the effects of competition through a guaranteed rate of return.

The franchise process is an excellent arrangement for revenue-starved cities and power-hungry bureaucrats. For cable companies, it is a mixed blessing: Winners of franchises can reap windfall rewards, but, by defending the franchise process against the free marketplace, they provide carte blanche to regulators by conceding the natural monopoly premise. As Cablevision's Charles Dolan warns, "As an industry, it is really bad for us to have an articulated view that cable can operate successfully only...in a monopoly environment. That view is an invitation to a regulatory response that would set us up as common carriers,"[7] just like telephone and utility companies.

The clear losers, however, are the subscribers. Instead of cities purchasing the desired public-interest services and paying for them through general taxes, the costs of the cable company's giveaways are passed along to subscribers through a hidden tax built into monthly rates. A recent study by the Ernst & Whinney accounting firm reveals that typical cable regulatory costs amount to \$5.60 Per month per subscriber.[8] In addition to rendering cable unaffordable to many, the regulatory burden limits choice, investment, and innovation. These are the costs of replacing market competition with political competition.

### **The Competitive Reality**

A skeptic hearing exhortations that cable television is a natural monopoly that should be locally regulated could have some questions at this point. First, if cable is a natural monopoly, why do we need to guarantee it with a franchise? Economists Bruce Owen and Peter Greenhalgh argue persuasively that given economies of scale, if a cable company "is responsive and efficient in its pricing and service quality then there will be little incentive for competitors to enter, and no need for an exclusionary franchise policy." [9] Thus, if entry restrictions are necessary to arrest competition, the industry by definition is not a natural monopoly.

Second, if cable is a natural monopoly, is it necessarily a local monopoly? Some observers use the terms interchangeably, but there is no evidence that economic laws respect municipal boundaries. Given large fixed costs, does it make sense to award a local franchise to one company when another already has facilities in an adjacent community? Yet such "wasteful duplication," as the natural monopoly proponents would call it, occurs frequently under the franchise system. Local franchises make no sense in a true natural monopoly setting.

These questions, however, go to the heart of natural monopoly theory itself, a doctrine that is under increasing attack.[10] In the face of crumbling conventional wisdom in this area, the burden should be on the natural monopoly proponents to demonstrate that competition is not possible, and further, that regulation is necessary. Such a demonstration will prove impossible in the cable context. Cable is both extremely competitive, facing both direct and indirect market challenges, and, in any event, is better left unregulated.

### **Direct Competition**

Cable companies can -- and, in numerous markets, do -- compete head-to-head for subscribers. In the absence of entry

restrictions, direct competition can be expected to increase.

There are three sources of direct cable competition, which though presently limited by government fiat, would thrive if unleashed. The first type of direct competition is between full-service cable companies competing citywide or in geographical areas where their services overlap for the same subscribers. There are no physical constraints on direct competition. Multiple entrants can expand limited utility pole space by using so-called F-arms or by burying their cable underground, a process that should prove minimally disruptive at worst. After hearing testimony on the issue, Boulder trial judge Richard Matsch found that "there can be competition in the marketplace, with the choice of price and service left to the consumers." [11]

A study conducted for the city of Maple Heights, Ohio, concluded that one company can provide cable services less expensively than can two competing companies, and that entry restrictions therefore constitute sound economic policy. This conclusion is hardly surprising in light of the models compared: a heavily regulated monopoly versus two companies subject to the same regulatory scheme. As cable regulations are premised on a monopoly award, it is absurd to expect multiple companies to operate profitably within their confines. While the Ohio study conceded that two companies would be likely to achieve higher subscriber penetration owing to intensified marketing (which seems sufficient reason itself to commend open market entry), it failed to measure the viability of two competing companies in an essentially unregulated environment as contrasted with the usual situation of an extensively regulated monopoly. [12]

There are no studies making this relevant comparison, but the necessary data can be extrapolated from two otherwise unrelated investigations. Owen and Greenhalgh found an 18 percent penalty in unit costs per subscriber in head-to-head competition between cable companies operating on the same streets, [13] while the Ernst & Whinney study found that 22 percent of cable costs are directly attributable to local regulations. [14] A comparison of these two findings reveals that the penalty for duplicated services that would occur in a competitive environment is offset by the extra costs imposed by municipal regulations under the franchise system. Thus, it appears that two companies, operating in a competitive, unregulated environment, could profitably offer cable services at the same or lower cost as a single company operating as a heavily regulated monopoly.

This conclusion is borne out by the few existing truly competitive cable markets, whose operations underscore the benefits attributable to a relatively unfettered cable marketplace. [15] In the essentially unregulated Lehigh Valley of Pennsylvania, two companies have competed successfully with each other for years. Edward Downing, business administrator of Bethlehem, Pa., asserts that the by-products of the region's laissez-faire attitude toward cable include price discounts, superior service, and freedom of choice. [16] The recent introduction of a second cable company in Presque Isle, Me. -- a city of only 2,000 residents -- induced the sluggish incumbent franchisee to dramatically update its technology and increase service options. [17] In Slidell, La., the city administrator, Reinhart Dearing, explains that the "spirit of free enterprise" that prompted the city to deregulate buses and taxicabs has also led to a thriving competition between two cable companies. [18]

The largest and most dramatic instance of direct competition is in Phoenix. Competing companies starting at opposite ends of the city have set records for their fast construction pace and are offering a choice to subscribers. As one observer reports, what distinguishes Phoenix "from a run-of-the-mill cable war is that this contest was fought with trenchers and sweat, not flip charts, slide shows, and cocktail parties for community bigwigs." [19]

A second source of direct competition is satellite master antenna television (SMATV), often referred to as private cable. SMATV is simply cable television using wires that do not cross public property. Generally restricted to apartment complexes and condominiums, SMATV firms install satellite dishes on the particular properties involved after negotiating with the property owners. In contrast to the "tier" system used by most cable franchises, which requires subscribers to purchase entire programming packages in order to receive the particular services they want, SMATV typically is more tailored to individual consumer tastes and choices.

In many areas, cable franchisees, accusing SMATV operators of skimming off the most lucrative markets, have attempted to erase SMATV competition by claiming that their exclusive franchises extend even to private property -- despite the fact that municipal authority to award such franchises in the first place is predicated on control of the city-

owned streets. The FCC recently resolved this issue, at least for the present time, by preempting nearly all state and local SMATV regulation. The FCC explained that this "open entry policy" will "encourage direct competition" as well as "a more diverse...telecommunications environment. [20]

If local prohibitions against the use of public property by cable competition were lifted, SMATV could easily serve subscribers in the vicinity of existing operations. It also could develop highly specialized services, akin to those offered by small special-interest (religious, trade, or neighborhood, for example) publications. In Austin, Tex., SMATV is circumventing city regulation and competing widely with the cable franchisee by using microwaves rather than cable to distribute programming from its central facilities to other parts of the city, thus avoiding the need to use public streets. [21] This is a creative approach that could be duplicated in other areas.

A third -- and perhaps the most provocative -- source of direct competition is available from an industry that itself has been partly deregulated only recently -- the telephone industry. With the burgeoning development of optic fibers (silicon dioxide threads capable of carrying vast numbers of voice and video channels in the form of encoded light waves), telephone companies should be able to readily compete for cable services by the 1990s. Eli Noam, a Columbia University business professor, has proposed direct competition between telephone and cable companies for each other's services, noting that capital investment is already largely in place. Noam concludes that "[b]y pitting large carrier systems against each other one encourages a dynamic development of technology and applications, and at the same time reduces the need for regulation." [22]

Here, as elsewhere, the greatest impediment to direct competition has been legal in nature. The FCC's ban on cross-ownership of cable systems by telephone companies has proved a major stumbling block. Commissioner Joseph R. Fogarty, an opponent of the cross-ownership restrictions, argues that the ban will "seriously retard, if not completely preclude, the introduction and deployment of broadband, fiberoptic technology," and maintains that competition would be beneficial to consumers. [23] Heeding his advice, the FCC in 1982 moved to reconsider the cross-ownership restrictions, and still has the matter under advisement. Because the two industries are already connected to vast numbers of homes, removal of the ban should induce spirited competition in two areas long considered natural monopolies.

### **Indirect Competition**

Only cable television offers its full range of telecommunications services. However, for each of its individual services, such as satellite programming or home security, competitors are mounting increasingly stiff challenges to cable franchisees. Competitors for video services include:

- direct broadcast satellite (DBS), which sends signals directly to home satellite dishes:
- multipoint distribution service (MDS), which sends microwaves to home antennas but which requires a direct line of sight from the transmitter to each antenna; and
- subscription television (STV), which requires a decoder to unscramble the broadcast signal.

Because these alternative media are not subject to local franchise regulations, they enjoy a competitive advantage to that extent over cable for the services they perform. Their existence gives additional weight to the argument that cable should be freed from the stifling confines of the local franchise process, to which it alone is subject.

### **The Inefficacy of Regulation**

It is conceivable that even in a free market, given economies of scale or other factors, a single cable company will emerge to serve some markets. If so, should the company be regulated, to protect consumers against the exercise of monopoly power?

Monopoly power is the ability of a firm to raise prices above costs or to engage in inefficient or wasteful operations

without fear of competitive response or lost customers. Competition -- direct or potential -- is the mechanism that forces prices to follow costs and encourages efficiency and innovation. As Owen and Greenhalgh argue, "[E]ven where competition fails to meet the textbook picture of 'perfect' competition, there is often nevertheless reason to expect competitive incentives to work to the advantage of consumers." [24]

This is particularly true in cable. As economist Irwin Stelzer observes, an unregulated cable monopoly will face competitive pressures on both the supply and demand sides. On the supply side, if entry is open to all (that is, no exclusive franchise), Stelzer explains that "even in situations where it is efficient for only one firm to provide service, the continual threat of being supplanted can effectively check" monopoly power. And the elastic demand for cable services (that is, acceptable substitutes are available and consumers are responsive to price changes) further curbs monopoly power. [25] Far from protecting cable customers, municipal entry restrictions and regulations immunize the franchisee from competitive influences that otherwise would promote low costs, responsive service, and technological innovation.

The Denver franchise again provides a good illustration of the inefficacy of regulation. Although awarded an exclusive franchise on the basis of natural monopoly, the franchisee when faced with a lawsuit that would open the city to competition, responded by cutting nonrevenue-generating community services, trimming its rates, and accelerating its construction schedule. Failure to take such actions, explained one company official, would mean "we could be left with a dinosaur." [26] Indeed, free competition would force upon bloated and unresponsive franchises the same dilemma that confronted the dinosaurs -- adapt or face extinction.

### **The Market or the State?**

As a matter of economics, cable is clearly a very competitive industry. But whether in fact it will compete is unfortunately not so much a question of economics as it is one of policy.

The battle over this issue is fierce. On one side are municipal governments seeking to protect their regulatory grip on cable and the power and profits it means to them. On the other side are cable competitors eager to obtain their share of the power and profits. In the middle are cable franchisees, who, despite their entrepreneurial instincts, are forced to play by the rules of the game and who are fighting to resist regulatory dictates while seeking to protect their franchised investments

Much attention has focused on Congress, where two cable deregulation bills are causing a stir. Both Senator Barry Goldwater's bill (S.66) and Representative Tim Wirth's bill (H.R. 4103) would preempt much local authority and preclude common carrier regulations, but also would protect existing local requirements and preserve the franchise process. The Senate bill authorizes media cross-ownership, while the House measure prohibits it. The prognosis for success for either proposal is questionable.

Meanwhile, under free market advocate Mark Fowler, the FCC is presently at the forefront of deregulatory efforts. Despite acknowledging its own jurisdiction over cable television and demanding "open entry policies in the satellite field," however, it has essentially taken a deferential, hands-off position on cable owing to cable's use of city-owned streets. r 27]

The other principal forum has been the courts. Since the Boulder decision, numerous challenges to specific awards and to the franchise process itself have been mounted on antitrust grounds. But both federal and state governments can insulate cities against antitrust liability, thus limiting the enduring value of the antitrust remedy.

The most comprehensive basis for a legal challenge to municipal authority over cable appears to be the First Amendment. [28] In *Mountain States Legal Foundation v. City and County of Denver*, [29] a group of citizens is challenging municipal authority to award exclusive franchises and to heavily regulate that medium as violative of their right to a free flow of communications under the First Amendment. Traditionally, newspapers have been subject only to the narrowest governmental regulations. Broadcast television, conversely, has been held subject to somewhat broader regulations owing to the perceived need to fairly allocate a physically limited spectrum [30] -- a limitation that no longer fully applies in the cable era.

The extent to which the First Amendment restricts government's power over cable television is far from resolved. One court has rejected the notion that "economic scarcity" (natural monopoly) is a sufficient rationale for government regulation,[31] while another has declared that cable should be treated as a newspaper/broadcast hybrid for purposes of First Amendment analysis.[32] Under almost any view, however, it is doubtful that the unprecedented extent to which cable communications are presently regulated can survive First Amendment scrutiny.

### **Prerequisite for Freedom**

Cable television and related technologies have deposited us on the threshold of an information society brimming with potential for increased freedom. From our individual homes, we can direct more of our own affairs, we can obtain vastly more voluminous yet personalized information, and we can make voluntary contact with anyone with whom we wish to communicate.

Nevertheless, as Orwell recognized, the same technologies that offer to so expand the horizons of freedom can just as easily be subverted once control over the mechanisms of information exchange is wrested from the individual. As de Sola Pool cautions, "It would be dire if the laws we make today... in such an information society were subversive of its freedom." [33]

Our Founders recognized that the free market provided the greatest guarantee of a free and vigorous exchange of ideas. As Supreme Court Justice Thurgood Marshall declared, "Our whole constitutional heritage rebels at the thought of giving government the power to control men's minds." [34] The free marketplace of ideas is the only aspect of laissez-faire with any degree of judicial protection today.

Somehow cable television has slipped past the free enterprise bulwarks that have provided unique protection to communications media throughout American history. But there is no evidence of market failure justifying this troublesome departure. The natural monopoly myth must be laid to rest if the integrity of cable communications is to be protected and its great potential for freedom to be fully realized.

[1] Ithiel de Sola Pool, *Technologies of Freedom* (Cambridge, Mass.: The Belknap Press of Harvard University Press, 1983), p. 10.

[2] Senate Committee on Commerce, Science and Transportation, *Print and Electronics Media: The Case for First Amendment Parity*, Committee, 98th Cong., 1st Sess., 1983, p. 71.

[3] Ralph Lee Smith, *The Wired Nation* (New York: Harper & Row, 1972), p. 1.

[4] *Community Communications Co. v. City of Boulder*, 455 U.S. 40 (1982).

[5] Walter Primeaux, Jr., "Some Problems with Natural Monopoly," *Antitrust Bulletin* 24 (1979): 63.

[6] William Schmidt, "Millions Spent in Contest for 'Showcase' Denver Cable Contract," *New York Times*, February 22, 1982, p. A12.

[7] Fred Dawson, "How Safe is Cable's 'Natural Monopoly'?" *CableVision*, June 1, 1983, pp. 333, 342.

[8] R. Peterson and A. Pearce, *The Cost of Cable Television Regulatory & Franchise Requirements: A Preliminary Analysis* (Tacoma, Wash.: Ernst & Whinney, 1982), p. 3.

[9] B. Owen and P. Greenhalgh, *Competitive Policy Considerations in Cable Television Franchising* (Washington, D.C.: Economists Inc., 1982), p. 19.

[10] For example, see Primeaux, "Some Problems with Natural Monopoly"; and Jan Bellamy, "2 Utilities are Better Than One," *Reason*, October 1981, p. 23.

[11] *Community Communications Co. v. City of Boulder*, 455 F. Supp. 1035, 1040 (D. Colo. 1980).



- [12] Touche Ross & Co., *Economic Analysis of Multi-Franchising Television Operations in Maple Heights, Ohio* (Portland, Touche Ross & Co., 1982).
- [13] Owen and Greenhalgh, *Competitive Policy Considerations*, p. 40.
- [14] Peterson and Pearce, *Cost of Cable Television Requirements*, p. 30.
- [15] See Richard Coorsch, "Cable Could Compete," *Consumers' Research*, October 1982, p. 22.
- [16] Personal interview with Edward Downing, business administrator, Bethlehem, Pa., September 23, 1982.
- [17] Personal interview with Dana Connors, city manager, Presque Isle, Me., October 22, 1982.
- [18] Personal interview with Reinhart Dearing, city administrator, Slidell, La., October 22, 1982.
- [19] Victoria Gits, "Adrenalin Days," *CableVision Plus*, January 17, 1983, p. 4.
- [20] *In the Matter of Earth Satellite Communications Inc.*, FCC Docket No. 33812, slip op., pp. 9-10 (November 8, 1983).
- [21] Eric Taub, "SMATV inroads in Austin," *CableVision*, October 24, 1983, p. 25.
- [22] Eli Noam, "Toward an Integrated Communications Market: Overcoming the Local Monopoly of Cable Television," *Federal Communications Law Journal* 34 (1982) pp. 209, 246.
- [23] Noam, *Toward an Integrated Communications Market*, pp. 248-49.
- [24] Owen and Greenhalgh, *Competitive Policy Considerations*, P. 5.
- [25] I. Stelzer, *The Economics of Cable Franchising* (London: National Economic Research Associates, International Inc., 1983), p. 16. H. Shoosan III, C. Jackson, and A. Kahn, "Cable Television: The Monopoly Myth and Competitive Reality," unpublished report, 1982.
- [26] Schmidt, "Denver Suit Looming as Threat to Way Cities Award Cable TV Franchises," *New York Times*, December 12, 1983, pp. 10.
- [27] *In the Matter of Earth Satellite Communications, Inc.*, pp. 9, 11-12.
- [28] See George Shapiro, Philip Kurland, and James Mercurio, 'CableSpeech' (New York: Harcourt Brace Jovanovich, 1983), and William Lee, "Cable Franchising and the First Amendment," *Vanderbilt Law Review* 36 (1983), p. 867.
- [29] 567 F. Supp. 476 (D. Colo. 1983), appeal docketed, No. 83-2145 (10th Cir. August 29, 1983).
- [30] *Red Lion Broadcasting Co. v. United States*, 395 U.S. 367, 388-90 (1969).
- [31] *Home Box Office, Inc. v. F.C.C.*, 567 F. 2d 9, 46 (D.C. Circ. 1977).
- [32] *Community Communications Co. v. City of Boulder*, 660 F. 2d 1370, 1378-80 (10th Cir. 1981).
- [33] de Sola Pool, *Technologies of Freedom*, p. 10.
- [34] *Stanley v. Georgia*, 394 U.S. 557, 565 (1969).