



WASHINGTON REPORT

NATIONAL ASSOCIATION OF EDUCATIONAL BROADCASTERS

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SUMMARY OF COMMENTS BEFORE FCC ON COMMUNITY ANTENNA TELEVISION REGULATIONS

We have been studying the mass of comments and reply comments filed in the Carter Mountain (CATV) rule-making proceeding. Naturally, the major thrust of the pleadings has been concerned with economic impact (or lack of it) upon commercial television operations. There have been a number of other significant areas covered by the pleadings, however, which may be of more direct interest to NAEB members. Here's a quick run-through of some of them:

1. UHF: A recurrent theme has been the adverse impact of CATV upon the development of UHF. Since the major development of ETV stations lies in UHF, any activities which tend to frustrate that development are properly our concern. National Community Television Association advances statistics which show rather convincingly that as of the moment CATV has not hurt UHF development. Thus, of 92 UHF commercial stations on the air, 22 have CATV service in the same community. In five of these communities, the UHF station went on the air prior to CATV, and in 14 instances, the CATV service existed before the station went on the air. Of 107 UHF stations which have gone off the air, only 10 had CATV competition. These figures as to present impact are questioned by some parties, notably Springfield Television Broadcasting Corporation, which filed detailed complaints concerning the adverse effect on its stations in western Massachusetts. However, the gravamen of the charges by anti-CATV forces is the potential effects on UHF in view of the rapid and continuing growth of CATV. Where multiple signals can be brought to most communities, investment in the hazards of UHF is discouraged. Nor do such parties find solace in the claim of NCTA that CATV is a boon to UHF since it provides a ready-built audience without the need for converters. The important asset of UHF Licensee wants is his own home audience receiving service directly through his own receiver.

2. Table of Allocations. A second major theme of the pleadings has been the impact of CATV upon the Commission's television allocations principles. The arguments follow patterns somewhat similar to those advanced in the MPATI rule-making proceeding. Typical of the contentions made is this excerpt from a pleading filed by Station WAAY-TV, Huntsville, Alabama:

When the Commission adopted its Sixth Report and Order, specific channels were allocated to specific communities. No channel other than the one specified for a given community could be applied for by an applicant. The Commission also specified the maximum power that could be used on given channels. Thus, the Commission recognized the normal area which a station would serve and also established grades of service for such areas and the normal extension of such grades of service. Likewise, the Commission recognized the existence of certain cities and areas which were separated by relatively short distances and combined such areas into one area for purposes of allocation. This system of allocation which is in existence today, fully establishes the area which a given station is supposed to serve. Competition was also created between stations in given areas according to the size and population by the allocation of more than one television station. No provision was made for any station to utilize a gimmick and leap frog its signals into the areas allocated to other stations, thus creating undue and unfair competition. However, the present CATV systems have provided the gimmick whereby such leap-frogging may be accomplished. By further utilizing microwave relay stations, this leap-frogging can now be extended over hundreds of miles so that the very foundation on which the Commission's present allocation policy rests is now threatened.

From a philosophical standpoint, too, there has been cause for complaint, based on the fear that rapid growth of CATV will turn smaller cities into cultural and economic suburbs of distant metropolitan centers. Moreover, in view of the tendency of CATV operations to concentrate on city rather than rural subscribers, it is conceivable that large areas of the country may lose the opportunity to receive either commercial or educational television. As a result, the number of parties filing comments have suggested that the Commission establish limits on the distance that a particular station's signals may be carried via CATV. Others, and particularly station KCOY-TV, Santa Maria, California, which is fighting a CATV proposal to bring the seven Los Angeles signals into that community, have requested that CATV be limited to carrying only the number of television signals which would be available in a community in a full Table of Allocations at maximum facilities.

3. FCC Regulation? A third major concern has been the extent of FCC regulation. As shown in the attached release, the Commission has been reluctant to assume full jurisdiction without specific legislation. Many parties have argued to the FCC that it already has full power to regulate CATV in its impact on television stations. ABC has filed a separate petition for rule making (RM-672--comments were due on November 23, 1964, and reply comments were due December 8, 1964), seeking Commission regulation of the carriage of television signals by CATV systems. A copy of the ABC petition is enclosed. Just as vociferously, NCTA and CATV

operators argue that the FCC lacks jurisdiction not only in the respects desired by ABC, but even in the limited areas which are the subject of Commission rule making in its Carter Mountain docket, its TV-CATV docket, and its CAR docket. There is considerable dispute in the pleadings as to whether the protection against CATV duplication should extend to the Grade B rather than the Grade A contour, whether more protection is warranted for UHF stations than for VHF stations, and whether the protection should be accorded to both simultaneous and non-simultaneous duplication.

4. Program Origination. Some concern has been voiced about program originations and advertising practices by CATV operators. The Commission in its TV-CATV docket is seeking information as to the exact extent of such program origination, including commercial announcements. Such practices amount, in effect, to pay-TV, a bug-a-boo for many commercial broadcasters far worse than CATV. For educational broadcasters, such practices have resulted in problems of commercial announcements inserted between educational television offerings. Future problems may include program origination by CATV operators of educational and cultural programs, over which educators may have little control with respect to quality, timing, distribution, etc. In a broader sense educational broadcasters must consider whether their non-commercial educational offerings will still maintain that image in the public mind if they are carried to large segments of the public by means of a pay-TV or even paid-CATV vehicle. It might, for instance, be difficult to secure regular ETV subscriptions from a viewer who is already paying regular substantial sums for CATV.

5. TV Satellites. The Commission's proposed rules do not include protection for TV satellite operations, defined as stations which do not originate at least 7 hours per week of local programming. Many commercial stations have opposed this limitation, on the theory that quite often satellite stations which start out with no local program origination later become independent local outlets. Satellite operation in the educational field is likewise becoming somewhat more common, with newer stations often-times relying heavily upon established ETV stations nearby. Multiple assignments in the same general area may well contemplate early stages in which the additional assignments are little more than satellite operations for particular viewing areas or particular segments of the viewing population. As such, ETV interests may have an interest in the Commission's proposals for satellites.

6. Translators. NCTA and the CATV operators argue that if strict duplication rules are to apply to CATV, similar limitations should be imposed on translator operations. In a recent case (Wichita Television Corporation, Inc., FCC 64-993, released October 29, 1964), the Commission added a 15-day before and after duplication condition, which had been voluntarily agreed to by a UHF translator applicant at Salina, Kansas.

The trade press reports that some Commissioners are in favor of a general policy of conditioning translator grants in this manner. At the present time, Section 74.732(e) of the Rules provides that VHF translator grants will not be made to commercial television stations:

- (1) Where the proposed translator is intended to provide reception beyond the Grade B contour of the television broadcast station proposed to be re-broadcast.
- (2) Where the proposed VHF translator is intended to provide reception to all or a part of any community located within the Grade A contour of any other television broadcast station for which a construction permit or license has been granted and the programs rebroadcast by the proposed VHF translator will duplicate all or any part of the programs broadcast by such other television broadcast station or stations: Provided, however, that this will not preclude the authorization of a VHF translator intended to improve reception of the parent station's signal to any community, any part of the corporate limits of which is within the principle city service contour of such station.

As a direct result of comments filed by interested educational groups, this above provision of the rules does not apply to educational television stations. In view of the active interest in applying more stringent conditions upon translator operations, ETV interests should be vigilant that additional amendments to the translator rules contain appropriate exemptions for educational interests. This is of particular importance because of the relatively large number of translators now operated by ETV stations to provide better and wider coverage for their signals.

7. Property Rights. A viewpoint that is voiced strongly in the comments, including active support by NBC and ABC, and active opposition by NCTA, is that the Commission's proposed rules should contain explicit recognition of property rights in television signals. While the Commission has indicated that it does not propose to deal in these proceedings with the question of whether there is a property right in broadcast signals carried, some commenting parties have argued that the rules as proposed appear to recognize rights of local stations to "require" carriage of its signal, and "permit" CATV operators to carry outside signals in certain instances. Because of this, parties such as ABC urge the Commission to make it clear that any such authorization by the Commission is not intended in ABC's words, to "derogate from any common-law or statutory rights, including those of copyright and unfair competition, which any person, including a Federal Communications Commission licensee, may have in programs thus placed on a cable system." Parties such as NBC and station KCOY-TV, Santa Maria, urge that CATV systems should, like translator stations and regular television stations, be required to obtain the consent of the originating station to rebroadcast its programs.

* * * *

We have attempted to provide some of the flavor of the arguments over CATV. This is probably the most controversial subject now before the Commission. Comments before the Commission (with the exception of NCTA's claim of assistance to ETV stations and its inclusion, in its entirety, of Loren Stone's article in the NAEB Journal* as Exhibit 1 of its Comments) fail to treat in any depth the relationship of ETV to CATV.

It seems clear from developments to date that ETV probably should not either oppose or support CATV in its entirety. The issue right now, however, is the narrower one of whether and in what manner CATV should be regulated by the FCC. ETV does have a stake in this matter. CATV is carrying ETV signals. Undoubtedly, it is providing new audiences for ETV and is thus assisting the development of ETV. However, just as ETV could not forever depend on private arrangements with commercial television stations to meet its needs, so ETV cannot depend forever on private arrangements with CATV operators as a substitute for direct ETV service. In fact, the problem is more acute insofar as CATV operators are concerned, since commercial television stations are subject to regulation, and hence must generally abide by programming representations made, whereas CATV operators for the most part are subject to no regulation whatsoever.

If CATV is to play an important role in the development of ETV, then it may well be that ETV interests would be well advised to support at least minimal regulation of CATV by the Commission, if only to provide some further assurance that arrangements now gratuitously proffered by CATV operators to ETV stations will not be abruptly modified or discarded at the whim of the CATV operator. In addition, as experience grows with CATV, and its impact, both beneficial and adverse, on ETV is more fully documented, there may be additional reasons why ETV should take a stronger stand, pro or con, on this touchy issue.

*Stone, Loren, "Community Antenna Television: Its Role in ETV," NAEB Journal, March-April, 1964, 23:2, p. 46.

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WILLIAM G. HARLEY
PRESIDENT

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TO NAEB INSTITUTIONAL MEMBERS

In revising our over-all publications program, the determination was made to turn over to the Divisions the responsibility for reprinting news of the latest developments in Washington affecting the various areas of educational broadcasting. Hereafter the Washington Report will be devoted to "in-depth" reports of general interest to the membership.

On the important issue of community antenna television regulation, we are pleased to inaugurate our new Washington Report with a paper by the NAEB General Counsel, Norman Jorgensen.

Mr. Jorgensen's paper is based on a study of the comments that parties have made before the Federal Communications Commission and concludes with some general recommendations particularly oriented toward educational television stations.

The development of wired systems that serve as adjuncts to broadcast facilities is already a part of the service provided to the public. While it has been related to educational television, there are no technical reasons why educational radio stations could not be included. Although such possibilities may appear remote at this time, we are including members of NER in this mailing so that all of the NAEB Institutional Division will be informed of current status of comments before the Commission.

On December 9, a meeting between NAEB/ETS officials and the educational television committee of the National Community Television Association established the need for close contact between the two groups in order to minimize conflicting positions. We shall undoubtedly be sending you further reports.

---W.G. Harley

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