Toward Community Ownership of Cable Television
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Broadcast television has emerged in the past two decades as the most powerful instrument of communication ever devised. It can transmit ideas and opinions to masses of individuals with unrivaled facility. The communicative power represented by broadcast television, however, is concentrated in a few hands; it has come to reflect a narrow range of ideas and a rampant commercialism that negate much of its potential as an educational or community-centered communication tool.1

Cable television (CATV)2 is promoted as an alternative to broadcast television designed to alleviate some of the problems caused by concentration of ownership. Cable possesses a new communication technology capable of increasing greatly the variety and content of electronic communications, for it permits the carriage of up to forty

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2. CATV (community antenna television system), also known as cable television, is a method of transmitting television signals by means of wire or coaxial cable. A CATV system is usually composed of a master antenna, frequently located in an elevated place where it can best pick up the electromagnetic waves of conventional broadcast television, and cable linkage which first extends as major trunk lines from the origination point or head-end and later branches off in smaller feeder lines. Drop lines are then connected from the feeder lines directly to subscribers' homes. Broadcast television reception is presently cable's most attractive feature, bringing viewers channels they normally could not receive from their TV or house antenna. See generally Sloan Comm'n on Cable Communications, On the Cable: The Television of Abundance 11 (1971) [hereinafter cited as Sloan Comm'n].

Cable television has maintained a steady period of growth covering two decades. In 1952 there were 70 CATV systems serving 14,000 customers. By 1962 this had increased to 800 systems serving 850,000 subscribers. Cable Television in the Cities: Community Control, Public Access, and Minority Ownership 12 (C. Tate ed. 1971) [hereinafter cited as Cable Television in the Cities]. From 1962 to 1972 the total number of systems more than tripled to 2,883. Television Digest, CATV Addenda to Television Factbook No. 42, at 1 (Dec. 25, 1972) (Weekly CATV addenda). It is generally agreed, however, that restrictions on the importation of distant broadcast signals by CATV into the big city areas has stunted the industry's growth. See Barnett, State, Federal and Local Regulation of Cable Television, 47 Notre Dame Law. 685, 688-90 (1972); Botzin, Access to Cable Television, 57 Cornell L. Rev. 419-21 (1972). In Teleprompter Corp. v. Columbia Broadcasting Sys., Inc., 94 S. Ct. 1129 (1974), however, the Supreme Court ruled that the importation of distant signals by a CATV operator does not constitute a performance under the Copyright Act, 17 U.S.C. § 1 (1970), and therefore no fees can be imposed by the copyright proprietor. Id. at 1138. See generally Note, Cable Television and Copyright Royalties, 93 Yale L.J. 554 (1974).
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channels at once. Cable can thus serve as a community information reservoir, transmitting a broad spectrum of cultural programming, educational material and local governmental activities to the communities it serves. Because its programming standards need not be uniformly high, CATV is particularly well suited to present locally produced, nonprofessional programs, which could range from simple talk shows to highly sophisticated documentaries. This means that CATV operators can provide true "public access," opening the doors of their origination studios so that area residents, and not just CATV owners and advertisers, can produce programming suited to their needs.

This technology thus permits the general public, including various minority groups, to use the communicative power of television

3. SLOAN COMM'N, supra note 2, at 37. CATV's greatest advantage is its multichannel capacity. This is made possible by the use of coaxial cables, which permit more efficient use of wavelength bands than broadcast television does, by avoiding the wavelength overlap that occurs when signals are transmitted through the air. Id. at 11-22.

In 1968 the FCC forecast that "the expanding multichannel capacity of cable systems could be utilized to provide a variety of new communications services to homes and businesses within a community, in addition to services now commonly offered." In re CATV, 15 F.C.C.2d 417, 419-20 (1968). Among the services mentioned by the FCC were: facsimile reproduction of newspapers and magazines; electronic mail delivery; information retrieval; and various educational and training programs, e.g., job and literacy training, preschool programs, and professional continuing education programs. Id. at 420. The Supreme Court has echoed this forecast. United States v. Midwest Video Corp., 406 U.S. 649, 651 (1972).

4. Cable television has a tremendously broad range of public service possibilities. For some of the more useful ones, see M. PRICE & J. WICKLEIN, CABLE TELEVISION: A GUIDE FOR CITIZEN ACTION 2-3 (1972) [hereinafter cited as PRICE & WICKLEIN]; Molenda, CATV and Access to Knowledge, 2 YALE REV. L. & SOC. ACTION 193, 243-50 (1972).

5. On the importance of programming diversity, see Barnett, Cable Television and Media Concentration, Part I: Control of Cable Systems by Local Broadcasters, 22 STAN. L. REV. 221, 234-38 (1970). This goal was implicitly recognized by the Supreme Court in Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 380 (1969): "It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market."


6. For an example of how this has worked in a New York City CATV system, see N.Y. Times, May 27, 1973, § 6 (Magazine), at 40. FCC Commissioner Nicholas Johnson sees the public access concept more in realpolitik terms. He describes the nonpublic access system as broadcasters reserving "sole discretion on which spokesmen and which time a certain point of view is allowed." However, public access "would allow groups to choose their own spokesmen and present their own views in the fashion they deem most favorable." Id. at 34.

One technological feature of CATV that would have a dramatic impact in this area is "two-way" communication. This would allow the viewer to communicate with either the origination studio or other viewers, in forms ranging from a simple yes-or-no feedback device to full audiovisual intercommunication. Community members would not only acquire a greater familiarity with the medium by being able to "talk back" to their television, but they would also be provided with an entire new system of intracommunity communication. See Molenda, supra note 4, at 245; PRICE & WICKLEIN, supra note 4, at 26-27. See generally id. at 1-18; Johnson & Gerlach, The Coming Fight for Cable Access, 2 YALE REV. L. & SOC. ACTION 217 (1972); Challenge for Change/Societe Nouvelle, Newsletter No. 7, Winter 1971-72 (published by the Nat'l Film Board of Canada); id., No. 4, Spring-Summer 1969.
for personal, community, or group purposes not presently served by broadcast television with its general programming designed for a mass audience.\textsuperscript{7}

This potential, however, can be effectively nullified by those who own cable systems if those owners use cable television only for the transmission of broadcast signals. In response to this threat, the Federal Communications Commission (FCC) in the past decade has promulgated several sets of rules governing CATV, culminating in its 1972 requirement that cable operators provide one free public access channel.\textsuperscript{8} The purpose of these rules, as the FCC put it, is to offer to the community "a practical opportunity to participate in community dialogue through a mass medium."\textsuperscript{9}

This Note will examine the present regulatory system and those institutions which determine or influence public access to CATV. It will discuss the weaknesses of these regulations and institutions, weaknesses which will tend to hinder the effective implementation of the FCC's important goal of "community self-expression."\textsuperscript{10} The Note suggests further that community ownership of CATV franchises constitutes the most effective means of achieving that goal, and it concludes with a discussion of the regulatory changes needed to implement community ownership.

I. The FCC's Public Access Rules for CATV

The FCC showed some concern for local expression in an early regulatory venture in the cable field. Its 1966 rules required cable operators to carry all local broadcast signals on demand, compelled cable operators to refrain from importing and showing broadcast pro-

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Efforts to increase access of minority groups to broadcast television have been stymied in large part by certain inherent characteristics of that medium. First, most television broadcast channels are in the VHF (very high frequency) range. Few channels can coexist in this band without substantial interference. Thus, broadcast television has operated on the premise that where there is a scarcity of channels, programming must appeal to as broad a segment of the population as possible, effectively discouraging minority-oriented broadcasts. Likewise, because of the limited availability of broadcast channels, their cost has placed ownership beyond the reach of all but a few. For a detailed technical explanation of the limitations of broadcast television, see Sloan Comm'n, supra note 2, at 16-20.

\textsuperscript{8} 47 C.F.R. § 76.251 (1973). See pp. 1711-12 infra.


\textsuperscript{10} See First Report and Order, 38 F.C.C. 688, 699 (1965).
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programming in the same time period that local broadcast stations planned to air that program, and ordered that there be no further cable importation of distant signals into the top 100 television markets.11

The FCC's first real effort to establish limited public access to CATV was associated with its so-called carriage and duplication rules, promulgated in 1969.12 Under them, the FCC conditions the right of a CATV operator to carry broadcast television signals, both local and distant, on the stipulation that the operator originate a substantial portion of his programming.13 This local origination requirement creates a degree of community self-expression since the programming to be produced and transmitted is necessarily directed to the interests of the local community that a particular CATV outlet serves.14 In contrast, the broadcast programming that a CATV outlet would otherwise carry is directed to a state or regional audience.

On February 12, 1972, the FCC released its most detailed and systematic CATV regulations.15 Of particular interest were the so-called "public access" provisions.16 Essentially, these provisions required that every CATV system designate one channel for public access, one for educational access, one for the use of local government, and one for short-term lease by the general public.17 The public access channel is to be made available to members of the public on a first-come, first-served basis, with equipment and studio facilities to be provided by the CATV operator.18 The lease channel is to be rented at a charge to the public.19 The Commission again required CATV operators to provide these designated access channels as a condition precedent to reception of broadcast television signals.20

16. Id. § 76.251.
17. All four of these channels are to be operated on a common carrier basis, open to the specified groups. Three of them—the public, educational, and local government access channels—are to be made available without charge. Id. § 76.251(a)(10). The FCC described these rules as interim and pointed to a need for free experimentation and the maintenance of programming diversity as its two greatest sources of guidance in promulgating the public access requirements. CATV Regulation—Report to Congress, 22 P & F Radio Reg. 2d 1775 (1971).
19. Id. § 76.251(a)(7).
20. Id. § 76.251(a). The regulation applies only to those CATV systems in the top 100 television markets with at least 3,500 subscribers.
II. The Effectiveness of the FCC Public Access Approach

These efforts by the FCC to promote public access to cable television represent a positive step toward community self-expression. The impact of the FCC's approach, however, may be diminished by the discretion lodged in local franchising authorities, by resistance of CATV ownership, and by a number of weaknesses in the public access rules themselves.

A. \textit{Problems in the Public Access Rules}

A crucial ingredient for public access channel development is the availability of sufficient video equipment.$^{21}$ Yet the only mention of equipment in the FCC's public access rules is an opaque passage requiring franchisees to provide "at least the minimal equipment and facilities necessary . . . ."$^{22}$ Nowhere are either "minimal" or "necessary" explained. A related problem exists with respect to leased channels, available for a fee to the general public. The FCC rules mention neither what procedures are to be followed in leasing channels nor what constitutes an appropriate leasing fee.$^{23}$

Second, the FCC has not required that programming funds be provided to help defray the costs of those interested in utilizing the public access channels.$^{24}$ The FCC apparently contemplated that, with studio equipment and facilities provided by the franchisees, programming costs would be negligible and would not significantly discourage use of the public access channel.$^{25}$ But the origination of programming, even with equipment provided, is relatively costly.$^{26}$

Low-income pub-

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\item See, e.g., Achtenberg, \textit{A Word to the Wise; Study that Franchise}, \textit{The Urban Rev.}, Nov.-Dec. 1972, at 29; N.Y. Times, May 27, 1973, § 6 (Magazine), at 40.
\item 47 C.F.R. § 76.251(a)(4) (1973).
\item Id. §§ 76.251(a)(7) & (a)(11)(iii). Leased channels may be most important to minority community groups and others, who, unable to obtain the nearly one million dollars that purchase of a franchise may require, would at least be able to operate a channel on a leased basis.
\item The FCC is now considering a proposal by Open Channel, a nonprofit CATV training group, to establish community level bodies which would coordinate funds directed to production facilities. \textit{Broadcasting}, May 28, 1973, at 51. However, an important ingredient is absent—money. Id.
\item 37 Fed. Reg. 3271-72 (1972). However, the rules themselves specify that production costs, except for live studio presentations of five minutes or less, can be charged to users. 47 C.F.R. § 76.251(a)(9) & (10)(ii) (1973).
\item See Price \& Wicklein, supra note 4, at 139-42. Although cable has been highly touted for its suitability for low cost production, the expenses of adequate programming may still be more than many are able or prepared to pay. For the cost of presenting a very simple program format, see Dordick \& Lyle, \textit{Access by Local Political Candidates to Cable Television: A Report of an Experiment}, Nov. 1971, at 8-10 (Rand Corp. Report no. R-881-MF). Some authorities claim that the cost of programming on a public access basis is beyond the grasp of most communities and especially those of the inner-city ghettos. See Feldman, \textit{Cable Television: Opportunities and Problems in Local Program Origination}, Sept. 1970, at 20-24 (Rand Corp. Report no. R-570-FF, prepared for the Ford Foundation).
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lic access users can avoid prohibitive costs only by employing a simple in-studio format, most likely of the commentary or discussion variety. While this type of restricted programming is communicative in the strict sense, such a narrow format emasculates the concept of community self-expression and can demean the public access user's message, relegating it to such a low level of viewing desirability as to depress its viewing audience and thereby muffle its voice.

B. The Impact of Local Discretion

The FCC, recognizing that some deference to local authority is a practical necessity, has withheld total federal preemption of CATV in its 1972 rules, designating certain areas of regulation for the domain of the states or localities. The regulatory powers reserved to the local regulatory authorities, whether they be states or municipalities, include the power to decide who will be granted a particular CATV franchise, what the specifications for the franchisee's facilities will be, what rates the franchisee will charge subscribers, and how consumer complaints will be processed and resolved. Local authorities exercise powers only within the guidelines the FCC has adopted, but they retain considerable discretion which can severely affect the efficacy of the FCC public access rules.

The method by which local authorities select the licensee for a particular CATV franchise may have significant consequences for public access. The FCC standards require only that each local franchising authority, clothed with the power to allocate CATV licenses or certifi-

27. In New York City, where pre-1972 municipal regulations already required a CATV public access channel, the experience was that while many groups or individuals were able to program at no cost, those of moderate means who envisioned something more ambitious than talk shows found costs to be roadblocks. Sloan Comm'n, supra note 2, at 231-35.

28. This deference is compelled at least partially by the administrative nightmares associated with allocating franchises to the thousands of communities which have or will have CATV. For an extended discussion of the legal and practical arguments for local autonomy, see Barnett, supra note 2, at 764-70.


30. At the time that the franchise is allocated there must be a public hearing at which the "franchisee's legal, character, financial, technical, and other qualifications, and the adequacy and feasibility of its construction arrangements" are examined. Id. § 76.31(a)(1). The franchisee must also stipulate that construction will begin within one year after FCC certification and that it will proceed at a reasonable rate thereafter. The reasonable rate is measured in terms of equipping some given percentage of the franchise area each year. In re Valley Cable Vision, Inc., 26 F & F Radio Reg. 320 (1973); 47 C.F.R. § 76.31(a)(2) (1973). Furthermore, the franchise, when first granted, cannot extend for more than 15 years, although it is renewable for reasonable periods thereafter. Id. § 76.31(a)(3). All rates or charges levied by the franchisee must be sanctioned by the franchising authority subject to public hearings when an increase is contemplated. Id. § 76.31(l)(4). Also, procedures must exist for the resolution of consumer complaints regarding service. Id. § 76.31(a)(5). Lastly, a franchise fee may be no greater than three to five percent of an operator's gross revenue, unless it can be shown not to interfere with federal regulatory goals. Id. § 76.31(b).
icates of operation, consider the legal, character, financial, and technical suitability of each applicant for a franchise and review the appropriateness of the applicant's franchise development plans. Financial position and technical expertise provide a fairly objective and easily applied method for initially selecting from among applicants. Beyond these requirements, however, the local authority is given little FCC guidance in setting allocation standards. Thus, the local authority may resort to whatever subjective qualifications it cares to employ, and there is little in the regulations to check the influence of political or personal favoritism. In addition, franchising authorities may prefer profit-oriented, nationwide conglomerate applicants over local non-profit ones because they seem to offer better financial and technical suitability. Such preferences, however, might have serious implications for the communication needs of a particular locality, since a local nonprofit organization might promote community self-expression more than a national, profit-oriented operator.

In addition, the authority to approve the location of a CATV franchisee's origination studio, or to require that there be additional studios in areas most accessible to the public, is delegated to local regulatory authorities. If the local regulator does not encourage the location of studios near the largest population possible, the distance may inhibit the use of the facilities because users may be unable or unwilling to travel a long way for this purpose.

31. See note 31 supra. Once the applicant has received a local franchise, he must receive a certificate of compliance from the FCC before he can begin operating. 47 C.F.R. §§ 76.11, 76.13 (1973).
32. See Barnett, supra note 2, at 691-94. As an illustration, in Connecticut present and former state representatives, a town chairman, and a former gubernatorial candidate have had either ownership interests or some other significant position in five of the nine locally owned franchises. Supplementary Brief for Petitioner at 9-14, In re Governmental Affairs Council, No. 11366 (Conn. Pub. Util. Comm'n, 1973). Several bribery and extortion scandals have already arisen in connection with the allocation of CATV franchises by local authorities. See Barnett, supra note 2, at 691; Wall St. J., Oct. 21, 1971, at 8, col. 2; Apr. 20, 1971, at 38, col. 1; N.Y. Times, Mar. 25, 1971, at 76, col. 6.

A lack of effective or realistic notice of the availability of franchises tends to result in a limited pool of political or business “insider” applicants. In Connecticut, for example, which, like most states, has adopted the Uniform Administrative Procedure Act, notice or publication consists of publication in the Connecticut Law Journal, which is not a periodical of wide public circulation. Conn. Gen. Stat. Rev. § 4-168(a)(1) (Supp. 1975). A statewide coalition of petitioners before the Connecticut Public Utilities Commission has in fact cited lack of effective notice as a reason for requesting the revocation of all the CATV franchises issued in the state. This petition was denied on March 24, 1973. Brief for Petitioner at 4, In re Governmental Affairs Council, No. 11366 (Conn. Pub. Util. Comm'n, 1973). One authority has pointed out that the requirement that there should be “a public invitation to those who might want to compete for the franchise . . .” was mysteriously omitted from the FCC's present CATV regulations. Barnett, supra note 2, at 735.
33. See generally Price & Wicklein, supra note 4, at 45-46; Sloan Comm'n, supra note 2, at 128.
34. 47 C.F.R. § 76.31(a)(I) & (2) (1973).
Finally, the FCC restricts the fees that a local authority may charge a franchisee. Although these restrictions are aimed at preventing fee-gouging, they may also discourage a local authority from charging even slightly higher franchise fees which could be spent to provide the additional equipment and training necessary for effective use of the public access channels.

C. Ownership's Discretionary Powers

Under the FCC's present regulatory system, the private cable operator for all practical purposes owns the CATV system. This proprietary interest gives rise to inherent powers which can overcome the purposes of the FCC's public access rules.

Private owners are necessarily concerned with maximizing profits, and their primary allegiance is to their investors. Profit maximization in the cable television industry is represented by an axiom: the more subscribers, the more revenue. Given this orientation, it is difficult for CATV owners to justify occasional programming alterations which require the expenditure of funds, yet may not attract additional subscribers. Because of this, as in broadcast television, there may be a tendency to avoid attempts at innovative community-oriented programming for fear of risking the loss of profit. The vagueness in the public access rules covering the equipment and expertise that must be provided by the CATV operator essentially leaves this to the owner's discretion. Thus, an owner seeking to avoid expenses can provide inadequate or inferior equipment that limits the public access user's ability to present his message effectively. And, when ownership is in

35. Id. § 76.31(b).

There is no hard and fast answer to this question [of charging higher franchise fees in order to fund public access] at present. Clearly, however, the factors that would bear heavily in the Commission's consideration of any such scheme would include the amount of excess fee, the danger that through funding, local government would control public access programming, and the possibility of other alternatives.

38. CATV is unlike broadcast television where a licensee cannot own the airwaves. Federal Communications Act, 47 U.S.C. § 301 (1970); Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 390 (1969). Broadcast television utilizes a natural and equally shared medium for transmission, whereas CATV transmission depends totally on the hardware bought and constructed by the CATV operator. Furthermore, a broadcast television licensee is endowed with some remnants of "private ownership" over the airwaves. See Note, The Broadcast Media and the First Amendment: A Redefinition, 22 Am. U.L. Rev. 180, 216 (1972). Therefore, for the purposes of the argument here, it is reasonable to assume that a CATV franchisee has interests of a proprietary nature.
private hands, the profits from the CATV system need not be used for any purpose that does not promote the owner's business or personal goals. Such aims are not likely to include public access.

Because the owner controls the actual mechanical telecasting of public access programming, he is in a position to censor or influence what is shown. In spite of FCC rules prohibiting cable operators from censoring what goes on the public access channels, some operators appear to be prescreening public access material. Public access will not engender the diversity of programming and opinion characteristic of community self-expression if owners are allowed to impose their personal standards of acceptability on public access users.

Furthermore, the FCC has identified localism as an important ingredient in its regulatory policy. Yet its tendency to favor, or its lack of desire to oppose, concentration of ownership in CATV contributes to a situation where national conglomerates will control most CATV systems. This concentration of control stands in the way of any

40. These profits will be largely from the telecasting of broadcast TV. See M. Seiden, Cable Television U.S.A.: An Analysis of Government Policy 3, 21-22 (1972); S. Rivkin, The Alternative Futures of Cable TV, Mar. 1971, at 1-4 (paper prepared for the Sloan Comm'); Barnett, supra note 5, at 225.


42. 47 C.F.R. § 76.251(a)(9) (1973).

43. See N.Y. Times, Mar. 21, 1973, at 75, col. 1; Apr. 11, 1973, at 95, col. 1. The FCC's 1972 CATV regulations specifically prohibit the operator from exercising control over program content with the exceptions of obscenity and lotteries. 47 C.F.R. § 76.251(a)(9) & (11) (1973). However, the question arises whether the CATV operator should be the one to decide what is objectionable. Additionally, many operators, spurred by fears of libel suits caused by their uncertain liability for programming on the access channels, may choose not to show what they feel might place them in jeopardy. See 37 Fed. Reg. 3271 (1972).

44. See First Report and Order, 38 F.C.C. 683, 699 (1965).

45. A recent agreement between two leading cable television corporations and a number of California minority groups gave those groups a guarantee of leased cable time, at one dollar a channel, in return for a promise not to oppose the merger of the two companies. The FCC has not taken any action to overturn the agreement. Agreement between ATC, Cox Cable, and various California Non-Profit Minority Organizations, 1972, at 2. The Justice Department in December 1972 brought suit to halt the merger. The FCC's Cable Bureau opposed the minority agreement portion of the package on the grounds that it amounted to coercion. Johnson & Dystel, A Day in the Life: The Federal Communications Commission, 82 Yale L.J. 1575, 1599 & nn.112-14 (1973). See Wall St. J., Dec. 21, 1972, at 10, col. 2.

46. The FCC in 1970 permitted the merger of Teleprompter and H & B American Corporation, the first and third largest cable operators. The FCC based its approval on the additional access and programming features Teleprompter was offering and, as Teleprompter argued, on "Teleprompter's financial capability to engage in quality program origination which will result in greater program diversity for public viewing . . . ." In re Teleprompter Transmission, 25 F.C.C.2d 469, 477 (1970). See also Johnson & Dystel, supra note 45, at 1578 & n.11. This was done in disregard of the caveats of such observers as President Johnson's Task Force on Communications which warned in 1968 that multiple ownership might eventually require restrictive governmental action. U.S. President's Task Force on Communications Policy, Final Report 49 (1968). See also
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significant diversity of programming.\textsuperscript{47}

Two case histories from broadcast television provide general illustrations of how the broad powers of ownership can be exercised to thwart community-oriented programming. First, in 1970 the FCC adopted its prime time access rule requiring that stations in the top fifty markets limit network programming to a total of three hours from 7 to 11 p.m., local time.\textsuperscript{48} The regulation was prompted by the FCC's desire to reduce the three major networks' influence over programming\textsuperscript{49} and to introduce increased local origination. It went into effect in September 1971, and evidence that the results were undesirable led the FCC to modify the regulations three years later.\textsuperscript{50} Instead of encouraging innovative and diversified programming, the rule resulted in a renaissance of \textit{Truth or Consequences} and \textit{Hee-Haw} re-

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Figures compiled in November 1972 showed that the top four cable operators—Teleprompter, Cox American, Warner Communications, Tele-Communications—together serve fully one-half the total number of subscribers served by the top 25 CATV corporations combined. \textit{Television Digest, Special Western Cable Television Show Supplement} 1-3 (prepared for CCTA Convention, Nov. 15-18, 1972). In Connecticut, for example, of 17 total franchises, Teleprompter has three. \textit{In re CATV Systems}, Nos. 10268, 10321 & 10314 (Conn. Pub. Util. Comm'n, May 21, 1969). The FCC has proposed the idea of controlling multiple ownership but has never undertaken any such policy. 35 Fed. Reg. 11042-43 (1970).

Another problem distinct from multiple ownership is cross-ownership—control of CATV outlets by other segments of the communications industry. President Johnson's Task Force on Communications warned that:

Owners of nationally-distributed magazines, television stations, film studios, chains of motion picture theaters, and, especially, television networks, will likely prove to be better competitors of or suppliers of program material, or both, to cable television systems. In view of these possibilities, both the FCC and the Department of Justice, as well as the Congress, should scrutinize developing patterns of ownership in the cable industry with an eye for conflicts of interest or threats of media domination.

\textit{President's Task Force on Communications Policy}, supra, at 49. In 1968, the National Cable Television Association's Chairman, Robert Beisswenger, reported that 30 percent of the cable systems in operation were controlled by broadcasters and that, of 256 systems started in 1966, 46 percent were owned by radio or television interests. \textit{Broadcasting}, May 12, 1968, at 29. In 1972, the FCC began to move to limit cross-ownership. Though its regulations do not deal with radio or newspaper cross-ownership, they do constitute a significant prohibition on cross-ownership by network interests and by broadcast television stations in the area of the CATV system. 47 C.F.R. \S 76.501 (1973). But the FCC may undermine the regulation by its encouragement of applications for exceptions. \textit{See} 58 Fed. Reg. 2970, 2977 (1973). The impact of common- and cross-ownership concentration of CATV has been extensively explored. \textit{See} Barnett, supra note 5.

47. The concentration of the media also has a detrimental effect on news reporting, especially with respect to facts relating to the concentration itself. Barnett, supra note 5, at 280.


49. The FCC stated that it wanted to see "an increase in the opportunity for development of truly independent sources of prime time programming." \textit{Id.} at 394. While its concern was obviously not directed at the issue of public access per se, the effect is to increase diversity of programming.


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This misapplication apparently occurred because the FCC gave all responsibility for introducing this independent programming to the local station's management. Instead of maximizing diversity, it is quite possible that the stations saw the prime time rule as a chance to maximize audience and profit.

Secondly, since the decision in Office of Communications of the United Church of Christ v. FCC, many minority groups have challenged the license renewals of local broadcast television stations, alleging that the stations are in violation of the fairness doctrine or are failing to present balanced programming. Many local stations have forestalled such challenges by agreeing to the formation of minority advisory committees, which were accorded a voice in the development of programming directed to the needs and cultural interests of minority viewers.

Broadcast stations, however, have often failed to meet the spirit of the agreement and have resisted giving minority advisory committees the resources necessary to carry out their responsibilities. This has resulted in severe problems for committee programming plans leaving only the dimmest prospects for the future.


52. 425 F.2d 543, 546 (D.C. Cir. 1969) (representatives of the listening public have standing to contest the renewal of a broadcast station's license). For a general discussion of the use of the renewal licensing process as a method of monitoring program performance and achieving media reform, see Note, Media Reform Through Comparative License-Renewal Procedures—The Citizen's Case, 57 IOWA L. REV. 912 (1972).

53. Approximately 150 petitions to deny have been filed in two years. Interview with Albert Kramer, Director of the Citizen's Communication Center, in Washington, D.C., Mar. 8, 1973 (notes on file with the Yale Law Journal). So far there has been only one successful challenge. See Pember, supra note 1, at 92-105.

54. In 1970 one such agreement was negotiated between Capital Cities Corporation which owns stations in Philadelphia, Pa., Fresno, Cal., and New Haven, Conn., and the Black and Spanish-speaking communities served by these stations. The agreement's primary feature was a commitment by Capital Cities to contribute one million dollars over a three year period to the "development of programming which reflects the views, aspirations, problems and culture of Black and Spanish-surnamed minority groups . . . ." Capital Cities Minority Programming Agreement, 1970, at 5. To facilitate the most expeditious use of the money, minority advisory committees composed of volunteer community representatives were formed at each of the stations. The agreement included provisions for telecasting a specified percentage of the programming during prime time. Id. at 6. None of the allocated funds, however, could be spent, nor any program aired, without the broadcast company's express permission. The station management also had to agree to the minority advisory committee's composition. Id. at 7.

55. The necessity to negotiate and justify even trivial expenditures drains the committee's time and energy, often distracting it from its primary purpose. See, e.g., letters from Phillip Morrow, Moderator of the New Haven Minority Advisory Comm., to Peter Orne, Gen'l Manager of WTNH-Channel 8, New Haven, Conn., Oct. 11, 1972 & Feb. 9, 1973 (on file with the Yale Law Journal). Meanwhile, the frustration of the constant delays has resulted in the resignations of a committee member and the executive producer.

III. Community Ownership as a Guarantee of Community Self-Expression

The FCC regulatory approach for CATV thus contains certain weaknesses which may threaten its ability to ensure community self-expression. Another approach to community self-expression which may alleviate many of these weaknesses is community ownership of CATV systems. Community ownership means, at the very least, that persons from the particular community served by a CATV franchise control that franchise on behalf of the community. They should have direct influence over such factors as how and for what purposes channels are allocated, how much funding community self-expression will receive, and what kind of access to the system will be available.

A. Community Ownership and the Problems in the FCC's Public Access Approach

Community ownership counters the weaknesses in the FCC's regulatory approach to community self-expression because it establishes automatic diversity of control of CATV systems. Diversity of control in turn provides a more solid potential for diversity of program material because communities differ in cultural tastes, foci of immediate concern, and social perspectives. Such control by the local community will ameliorate problems of centralized FCC enforcement by making the CATV franchise directly responsible to the local community.

57. A third approach which has received a great deal of public comment is to give "common carrier" status to all CATV channels. A number of observers have suggested that prohibiting the CATV proprietor from producing programming would minimize the effects of concentration of control and thereby create an opportunity for diversification of programming. See F. Powledge, An ACLU Guide to Cable Television 31-33 (1972) (ACLU pamphlet); Barnett, supra note 5, at 237-46; Note, Common Carrier CATV: Problems and Proposals, 37 Brooklyn L. Rev. 553 (1971). This alternative, however, has several shortcomings. First, it is important to note that the present FCC public access channels are now operated on a common carrier basis. See note 17 supra. Therefore, a common carrier CATV system would conceivably confront the same problems of funding and expertise among users that loom large for the public access channels. Second, if all the CATV channels were to be used as freely as the telephone, it is probable that the general public could not supply enough adequate programming to fill all or even a substantial portion of the available cable-time. This task would probably be assumed to a large extent by professionals who would be best equipped to profit from such a situation. Consequently, most of the programming might well be produced by only a few, resulting in the same dearth of program diversity that common carrier proponents seek to avoid. Finally, the complex procedural and administrative problems involved in giving common carrier status to CATV systems may be insurmountable at this time. See FCC Clarification 1974, 39 Fed. Reg. 14291-92 (1974); Barnett, supra note 5, at 246-49; Note, supra, at 543-46.

58. The term "community" refers to all residents of an ascertainable geographic area, such as a town's boundaries, a metropolitan area, or a rural district, and includes all the diverse ethnic and cultural groups represented among the community's residents. The FCC has approximately 3,000 CATV systems under its authority. Television Digest, CATV Addenda to Television Factbook No. 42, at 1 (Dec. 18, 1972) (weekly CATV addenda). There are substantial difficulties in exercising effective enforcement of the public access provisions on such a broad scale.
Local ownership will also provide a natural barrier to further nationwide concentration of ownership of CATV franchises. Additionally, maintaining cable television's independence from large corporations might improve the public's attitude towards the medium, thereby encouraging greater citizen participation in public access opportunities.60

Community control through community ownership is also more likely to provide the funds and media expertise to insure high quality community programming. Cable television represents a profitable business venture largely because of its ability to retelecast the signals of distant broadcast TV stations.61 The profitability of CATV does not depend on whether it is nationally or community owned.62

Under a community-owned system the profits from the franchise can be devoted to the production of community programming and to the training of community members in the technical skills necessary to produce such programming.

Whether community ownership in fact produces high quality, locally oriented programming and skilled personnel depends largely on whether the community actually exercises control over the operation of its franchise. If the community does not exercise such actual control, only "local"—and not "community"—ownership can be said to

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61. Initially, cable television was so profitable that it made a considerable number of millionaires. Since then, it has become less a "bonanza" and more a respectable investment venture. In any event, subscribers to the service usually pay anywhere from five to ten dollars per month. Thus, long after the operator has paid off his initial capital expenditure he still receives the monthly charge. See Price & Winklein, supra note 4, at 8-9; Barnett, supra note 5, at 210-11; Botein, supra note 2, at 433. A proposed municipally owned system has projected profits of three million dollars per year after ten years. BROADCASTING, Oct. 16, 1972, at 56. But see M. SEIDEN, supra note 40, at 29-48. For a general review of the economics of operating a CATV system, see Druckman, Economics of CATV, Sept. 1, 1970, at 4 (report prepared for the Sloan Comm'n).

The self-sufficiency of a cable system could be affected by the size of the community served by the franchise. Where the population density and size was either too small or too large, there are reasons to believe that the time required for a CATV system to reach financial self-sufficiency could be retarded. Problems would arise in communities which do not possess the population density necessary to support a cable system and, therefore, do not possess enough potential subscribers to support a system. These communities are likely to receive cable only where state regulatory bodies compelled a franchisee to wire rural localities as a condition to receiving the franchise in more profitable, densely populated areas. See, e.g., In re State Highway Comm'n, No. 10532 (Conn. Pub. Util. Comm'n, Mar. 12, 1964). Perhaps advancing cable technology will eventually make CATV's introduction into such areas economically possible; until then community ownership will probably be unlikely.

62. Other factors such as degree of market penetration and the impact of FCC rules will influence cable's profitability. For an exploration of these considerations and their effect on CATV financial rates of return, see Adler & Karl, The Financial Impact of Proposed Federal and State Regulations on a Typical CATV System, Mar. 16, 1971 (paper prepared for the Sloan Comm'n).
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exist. A locally owned franchise which is not controlled by the community in some form could well be operated in the style of a nationally owned franchise, with its profits and position of influence serving extra-community ends. On the other hand, a truly community-owned system responsive to the community can redirect the profit and influence from private to community ends.

Community ownership of CATV does not necessarily require programming designed for the community. Community ownership only creates a capacity for community self-expression not provided by nationally based, private ownership. Although few empirical studies have analyzed community preferences, the great increase in demand on presently existing public access facilities in those systems monitored indicated that community programming will be desired. In any event, a decision not to have community programming is itself a form of community self-expression.

B. Alternative Forms of Community Ownership

There are four basic business forms that a community might employ for ownership. Each of these would provide at least a partial answer to the vital question of how control of a community-owned system would be established and allocated. Three of these alternatives would be generated and operated by private but community-oriented sources, while the fourth would be quasi-public in form.

The first business form follows the profit-oriented corporate model, with shares of stock being sold to community members. In light of its promise of substantial profits, it would be especially attractive to minority groups in which there is a strong interest in keeping venture capital within the group and in fostering indigenous business development. Although not well suited to provide for broad-based community input, this form of ownership would be particularly good where there is a need for balancing the media representation of various groups within the community. The CATV franchise could be owned and operated by members of a minority group which is otherwise

63. Such control might be exercised through elections, ownership of stock, or a system of membership rights. See pp. 1722-26 infra.

64. In New York, where two CATV systems provide public access channels, the number of hours of public access programming has increased from approximately nine to 135 hours a week. N.Y. Times, May 27, 1973, § 6 (Magazine), at 35. However, subscription rates have lagged about 36 percent behind what had been anticipated. Id. at 46.

65. This is what has been done in Watts, California. CABLEINES, Mar. 1974, at 9. The Urban Institute has suggested that the Model Cities programs and Community Development Corporations be the nuclei for a system of this type. CABLE TELEVISION IN THE CITIES, supra note 2, at 31.

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The profit-oriented corporate model, however, presents a few important difficulties with respect to continued community influence. Unless a majority of the voting stock is sold to and remains in the hands of members of the community, there is less assurance that the community's desires will be followed in corporate decisions affecting community self-expression. Even if community members control a majority of the stock, the stockholders may not actually control the decisions of the board of directors. Also, there is some danger that the control of the stock might remain in the hands of those community members who maintain a greater interest in profit maximization than in community concerns. Nevertheless, the broader the dispersion of stock ownership within the entire community, the more responsive to all segments of the community shareholder decisions are likely to be.

A second possible private business form is the nonprofit corporation. If properly established, its chief potential advantage would be its ability to attract funding because of the possibility of tax deductions. This asset, however, might be its greatest weakness because, unless the community members were affluent enough to be benefited by the tax incentives of this business form, the motivation for them to contribute would be significantly reduced, jeopardizing community control. For this reason, the nonprofit form would be attractive only for those communities with a fairly stable economic base.

The directors in the nonprofit business form would be less likely to forget the goal of community self-expression than would their counterparts in the profit-oriented corporate model. A group or community employing a nonprofit rather than profit form, however,

66. Minority group control of a CATV franchise can be justified, even if such groups would not be responsive to the entire community, because of the exclusion of minority groups from the broadcast media and the potentially disruptive influence that voicelessness has on minority groups. See, e.g., U.S. PRE SIDENT'S COMM'N ON CIVIL DISO RDER S, REPORT 210 (1968). Cultural and racial minorities and low-income groups all suffer from underexposure on broadcast television. Other groups, to the extent that they are part of white, middle class, mainstream America, are relatively better off. See, e.g., Comments of Youth Organizations United, Inc. at 5-8, In re Amendment of Part 74, Nos. 18397-A, 18891 & 18892 (FCC 1970). In fact, income and the need for greater representation on broadcast television may be inversely proportional. See generally Mendelsohn, supra note 7, at 45-70.

There are problems with this compensatory approach, however. Administratively, it may be exceedingly difficult to decide who is included within a particular group or who the group's true representatives are. See B. BITTKER, THE CASE FOR BLACK REPARATIONS 71-86, 91-104 (1973).


68. See generally Rusan, What You See is What To Get: Cable Television and Community Control, 2 YALE REV. L. & SOC. ACTION 278-80 (1972).
would find it more difficult to capture investment capital from conventional business sources.

A third private business form is the cooperative. The chief attraction of this alternative is that it is a democratically composed and managed association which offers significant equality of ownership and control. Every subscriber to the cable system would assume member status and acquire a direct voice in shaping the form and extent of community self-expression in the CATV system. The cooperative would probably be practical only in smaller communities of 10,000 people or less, due to the difficulty of administering its democratic form of management on a larger scale.

The last basic business form entails either direct or indirect ownership of the CATV franchise by a municipality or township. A principal advantage of this municipal form is that, for many localities, the municipality may be the only entity in the community with the financial and organizational capacity necessary to undertake CATV ownership. Specifically, lenders will be more inclined to stake a city than a private group with the venture capital necessary to start a CATV system. Further, since municipal ownership could be construed


70. CABLE TELEVISION IN THE CITIES, supra note 2, at 33.

71. Variations on these basic models can be achieved through the use of turn-key arrangements, whereby an outside CATV manufacturing firm constructs the system and then sells or leases it back to the community. Also, profit and nonprofit corporations can be used in tandem in order to acquire some of the advantages of both variations. Equally possible is a joint venture concept, featuring a purely business corporation tied to a community corporation. The community-based corporation would maintain a controlling equity interest in the arrangement. For a description of even more esoteric arrangements, see Price & Wicklein, supra note 4, at 40-42; S. Rivkin, Shaping Ownership and Control in the Cable Television Industry, Feb. 11, 1971, app. c (prepared for Sloan Comm'n).

72. In some states, there would probably have to be legislative action specifically permitting the municipal form of ownership. See, e.g., Byers v. Board of Supervisors of San Bernardino County, 262 Cal. App. 2d 148, 68 Cal. Rptr. 549 (1968) (a city board of supervisors cannot imply this power and must wait for express state legislative authorization before it could own and operate a television translator service).


If CATV is not viewed as a public utility, then a state must probably amend its existing CATV statutes to permit municipal ownership. See, e.g., Cal. Gov't Code § 53065 (West 1972); Mass. Ann. Laws ch. 166A, § 1 (Supp. 1973); N.Y. Exec. Law § 811 (McKinney 1972).
as involving state action, it would permit any unrepresented minority group to protect its constitutional interests in court.\textsuperscript{73}

However, it would be unwise to embrace too readily a system of communications owned by local governments, since generally local government is not a strong defender of First Amendment rights of free expression. Furthermore, municipalities may tend to use the proceeds from CATV to fund other municipal services. Abuses might arise where a city government chose to bleed financially the cable operation to the detriment of the subscribers and community self-expression.\textsuperscript{74}

In light of these problems, perhaps the best organization for municipal ownership would be one that gave the city's cable managing agent the greatest autonomy in decisions on community expression. To facilitate this, the municipality could form a separate corporate body which, while accountable to the city, in a restricted sense, would have the responsibility for day-to-day operation of the cable system.\textsuperscript{75}

Another problem associated with municipal ownership is the establishing and allocating of control. Once an institution has been established for operating a city-owned CATV system, all segments of the community must be assured a voice in decisionmaking about those matters related to community self-expression. The theory of municipal ownership is that the election of municipal officials will ensure that the franchise is responsive to the concerns of the community. Some additional procedure, however, should be provided, especially in highly heterogeneous communities (where the community comprising the entire municipality includes several subcommunities), to guarantee that smaller segments of the community with fewer votes can participate in the municipal CATV system.

A possible solution might be to designate cable time or a community programming channel for each of the different segments within a given community system.\textsuperscript{76} On this basis each subcommunity

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\textsuperscript{73} See Note, The First Amendment and the ‘Abridgeable’ Right of Self-Expression, 72 Colum. L. Rev. 1249, 1252, 1254-59 (1972).

\textsuperscript{74} At a conference sponsored by the National League of Cities and the United States Conference of Mayors, Mayor John V. Lindsay of New York likened cable to “the discovery of urban oil wells under our city streets,” and asserted further that “we have the right to develop public income from that asset to be used for the public good.” N.Y. Times, Feb. 6, 1973, at 73, col. 3.

\textsuperscript{75} The accountability to the city could result from a combination of regularly scheduled hearings and intermittent reports. This accountability, however, would only extend to a determination of the corporation’s financial condition and of its conformity to the declaration of intent concerning community self-expression established in the franchise agreement.

\textsuperscript{76} For a discussion of the problems in discerning the different groups which make up a given community and establishing who their members and representatives are, see B. Bittker, supra note 66, at 91-104.
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would be allowed to decide what type of community self-expression it wanted. Alternatively, channels or cable-time for community interest programming could be allocated on the basis of wards or districts, into which most municipalities are divided, allowing each division to establish its own procedure for allocation among its inhabitants. As a third possibility, channels or cable-time might be allocated to community service programs that cater to particular communities.

Occasionally, however, these prophylactic measures dealing with potential disputes would be either impracticable or insufficient. This eventuality should be met by the creation of a grievance procedure, perhaps patterned after those found in many unions, which would hear and resolve the complaints of groups and individuals who feel that they have been unjustly overlooked by the municipal CATV system. Initially, a dispute over community-oriented programming would pass through a preliminary level where the parties would be encouraged to resolve their differences on their own. The final stage might be compulsory arbitration, employing an arbitrator from outside the system area, mutually agreed upon by the parties.

Finally, to provide an outlet for minority expression even in situations where the measures outlined above fail to resolve a dispute, the current FCC public access provisions should be retained. Despite their inadequacies, the present rules would serve as a backstop for community ownership, no matter what business form is employed, and would continue to provide at least some public access in those communities where community ownership has not been instituted.

IV. Needed Regulatory Changes

To foster community ownership on the widest scale possible, two basic changes should be made in the present regulatory scheme. The first and most important one addresses the manner of determining franchise allocation. FCC regulations should establish a priority scale which favors community ownership. This would be a device to be used by each local franchising agency in the allocation of CATV franchises, guiding the agency's discretion in choosing among applicants who have already met the minimum financial, technical and character

77. Such service programs might include, for example, Model Cities programs or Community Development Corporations.
78. For a survey of the workings of labor grievance procedure, see N. CHAMBERLAIN, SOURCENOOK ON LABOR 191-219 (1964).
qualifications in the present rules. Adoption of the scale thus would not mean the awarding of franchises to unqualified operators; each applicant would first have to be judged financially sound and possessed of the necessary technical and business knowledge to operate a CATV franchise successfully. Beyond that point, simply stated, each franchise applicant would be ranked according to a point scale. Points would be awarded in each of several specified categories. What follows is a sketch of one possible set of categories.

The first category of the priority scale would assess localism of ownership. As was pointed out earlier, if the ownership is indigenous, the potential for influence of local concerns in the system’s operation is greatly increased. An applicant’s localism would be measured by the percentage of ownership in the hands of residents of the franchise area. Even where the franchise applicant is a corporation whose shareholders live both within and without the local franchise area, the locality-of-ownership criterion is relatively objective and readily ascertainable, allowing little room for the discretion of the local franchising authority.

A second, related category would favor the applicant who most represents the community to be served by the CATV system. Representativeness is measured by the extent to which those controlling a CATV system reflect the racial, ethnic and cultural makeup within the franchise area. Representativeness, though similar to localism, goes further in ensuring that all segments of the franchise area are afforded the opportunity to influence the operation of the CATV system.

A third category would favor applicants who represent the least concentration of CATV ownership. Concentration of ownership in the communications industry endangers free expression by discourag-

80. Id. § 76.31 (1973). This scheme would not disrupt the present federal-state/local relationship regarding the regulation of cable television.
81. See pp. 1716-17 supra. Representativeness of applicants could be improved indirectly by more realistic publication and notice requirements with respect to a franchise available for award. See note 32 supra. One such approach for notice requirements is the recently issued rules and regulations of the Treasury Department for revenue sharing. 31 C.F.R. § 51 (1973). Not only are revenue sharing reports to be published in a newspaper of “general circulation” by the local government issuing them, but also there must be an effort to “advise the news media, including minority and bilingual news media, within its geographic area.” Id. § 51.13(a) & (b).
82. Although the applicant which represents the broadest cross-section of the population of the franchise area should ordinarily score highest on the representativeness criterion, the scale might also consider the degree to which certain groups are denied effective representation by the area’s existing communications media. For instance, an applicant representing a minority group overlooked by the existing local media would not represent a cross-section of the franchise area, but awarding a franchise to such an applicant might effectively balance the representativeness of the area’s total communications media. See note 75 supra.
ing diversified, locally-oriented programming.\textsuperscript{83} Under this criterion an applicant would be required to divulge how many broadcast and CATV systems he already owned, directly or indirectly. To choose between applicants of equally large size, consideration might be given to the proportion of an applicant’s existing communications property within reach of the franchise area. Because highly concentrated control of the communications facilities within a given area or region represents a more immediate danger than ownership dispersed throughout the country, the applicant with the fewest holdings near the franchise area would be favored.

The fourth and last category would measure an applicant’s public access capacity. Several factors would be taken into consideration. One of them would be the type and quality of equipment an applicant plans to make available for public access and viewer feedback. For example, the type of two-way system used can have important consequences for community self-expression.\textsuperscript{84} In general, the more sophisticated the technology, the more effective and diverse community self-expression is likely to be.\textsuperscript{85} Additional factors in this public access capacity category include the number of channels an applicant intends to provide\textsuperscript{86} for public access and leasing purposes, and the accessibility of the applicant’s public access studios to the residents of the franchise area.

The chief purpose of the priority scale is to reduce the discretion of the local regulatory authorities over the allocation of CATV franchises and thus reduce the likelihood of the “smoke-filled room” type of decision in which favoritism and other factors are given more consideration than is the public’s interest in community self-expression.\textsuperscript{87} Furthermore, a priority scale which requires the authority to make explicit its judgments about various applicants makes it easier to police against abuses of the authority’s discretion.

Economically, the priority scale should encourage what might be called public access competitive bidding: franchise applicants should seek to rank as high as possible on the priority scale, increasing their chances of receiving the CATV franchise, without having prohibitive expenditures which would compromise the financial success of the undertaking. Simultaneously, minimal financial, technical and char-

\textsuperscript{83} See pp. 1716-17 supra.
\textsuperscript{84} See note 81 supra. This feature is already required under the present public access rules but only in the most primitive form. 47 C.F.R. § 76.251(a)(5) (1973).
\textsuperscript{85} See pp. 1712-13 supra.
\textsuperscript{86} See p. 1711 supra.
\textsuperscript{87} See note 35 supra.
acter requirements, uniformly imposed on all applicants for a system, would insure that the concern for community self-expression not lead to fiscal irresponsibility.

A significant obstacle to achievement of the goal of fostering community ownership of CATV systems is that so many CATV franchises have already been allocated by local authorities to large CATV operators, even in cases where the franchisee does not plan to begin laying cable for years to come. The second regulatory change thus needed to open ownership opportunities to community groups involves FCC restrictions on cross-ownership and common ownership, limiting the concentration of control of CATV systems. Unlike the concentration criterion of the priority scale which would only apply to the allocation of new franchises, these restrictions on concentration of control would gradually apply to previously granted franchises. Those licensees who possess more than a certain number of holdings overall or within a given geographical area would face nonrenewal of the CATV franchise. In order to ensure that no community presently served by a cable system would be totally deprived of the service, however, nonrenewal would only occur where another qualified applicant challenged the renewal of the license. The challenger would have to stand ready to reimburse the divested licensee for losses incurred in abandoning his fixtures, the challenger thereby becoming the owner of the system. Prospective applicants, interested in seeing a CATV system made available for their acquisition, would act as private attorneys general, ferreting out unduly large concentrations of CATV ownership.

Properly enforced, the two proposed regulations would reverse the

90. These should apply to most segments of the communications media including television and radio stations, CATV systems, and communications equipment manufacturing concerns. The current regulations include certain minimal prohibitions on cross-ownership. 47 C.F.R. § 76.501 (1975). See note 47 supra.
91. See p. 1727 supra.
92. This provision should overcome any possible claims of a taking of property without compensation. At any rate it is clear that the licensee has no property interest in the renewal of his license. See Radio Comm’n v. Nelson Bros. Co., 269 U.S. 266, 282-85 (1933) (established that the FCC is not bound to maintain a license allocation if fair and equitable distribution compelled a change). See also Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 369 (1969).
toward ownership concentration and would free existing franchises for acquisition by community groups and other local entities.93

Conclusion

Cable television has the technological potential to permit community self-expression. However, the increasing trend towards concentration of CATV ownership, the FCC's ambiguous and inadequate CATV public access rules, and the insensitivity of local franchising authorities and CATV operators to the value of community input threaten to undermine the potential of community participation in cable television.

The most effective way to assure that community self-expression becomes a reality is through community ownership of CATV systems. This can be achieved by means of a number of different community ownership forms whose relative suitability depends on the demography and geography of a particular community. But whether this possibility becomes a reality depends largely on FCC action to open up the cable field. FCC regulations should be amended to reduce the passive holdings of large communications companies and to channel the discretion of local franchising authorities, setting enforceable priorities which will favor community ownership.

93. The advent of widespread community ownership of CATV outlets should have the further virtue of reducing the FCC's profile in the area of programming. This is desirable in view of the Commission's history of poor policy planning, its industry orientation, and its inconsistent application of its regulations. See H. Friendly, The Federal Administrative Agencies: The Need for Better Definition of Standards 53-58 (1962); Jaffe, The Scandal in TV Licensing, Harper's, Sept. 1957, at 77; Johnson & Dystel, supra note 45, at 1589.