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OFFICE OF TELECOMMUNICATIONS POLICY

EXECUTIVE OFFICE OF THE PRESIDENT

WASHINGTON, D.C. 20504

March 9, 1976

GENERAL COUNSEL



MEMORANDUM FOR F. LYNN MAY

FROM: THOMAS J. KELLER 

SUBJECT: Cable Legislation

This is in response to your request for OTP's views on the DCRG option paper from Messrs. Cannon, Schmults and MacAvoy concerning cable television. Our position is set forth in the attached memorandum which would go forward when the option paper is submitted as you suggested.

Summarized briefly, our view is that the options recommended by the DCRG are inadequate. On the one hand, the DCRG legislative option is untimely not only in the sense that it is highly controversial, but also in that it is dependent upon enactment of new copyright legislation. On the other hand, the other recommendations, i.e., issuing a White Paper or testifying at cable hearings, would abdicate Administration leadership on the cable deregulation issue.

We recommend a middle course which will put the Administration out front with legislation addressing the jurisdictional balance between Federal and non-Federal regulatory authority. This is a critical issue facing the cable industry, but one which would avoid, for the reasons set forth in the attached memorandum, the most controversial aspects of the cable problem.

Attachment

cc: Jim Cannon ✓
Ed Schmults
Paul MacAvoy



OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20504

DEPUTY DIRECTOR

MEMORANDUM FOR THE PRESIDENT

FROM: JOHN EGER
SUBJECT: Cable Television Legislation

A memorandum has been submitted for your consideration by the Domestic Council Review Group (DCRG) recommending various options regarding the Administration's position on cable television. Those options are:

- (1) submit legislation that would deregulate cable carriage of distant signals and pay programming;
- (2) issue a White Paper discussing cable regulation and competition;
- (3) combine options 1 and 2;
- (4) do nothing except testify generally in favor of cable deregulation at congressional hearings.



Summarized briefly, my view is that the options recommended by the DCRG are inadequate. On the one hand, their particular legislative approach is untimely not only in the sense that it is highly controversial, but also in that it is dependent upon enactment of new copyright legislation. On the other hand, their other recommendations, i.e., issuing a White Paper or testifying at cable hearings, would abdicate Administration leadership on the cable deregulation issue.

I recommend a middle course which will put the Administration out front with legislation addressing the jurisdictional balance between Federal and non-Federal regulatory authority. This is a critical issue facing the cable industry, but one which would avoid, for the reasons set forth below, the most controversial aspects of the cable problem.

The DCRG legislative approach should be rejected.

There are two principal issues involved in the cable regulatory milieu:

- (1) economic restrictions on pay programming and distant signal retransmission; and
- (2) allocation of jurisdictional responsibilities between Federal and non-Federal regulatory entities.

The legislative approach recommended by the DCRG would address only the pay cable and distant signal questions, which are the most controversial and will evoke heated reactions from the copyright and broadcast industries. The elimination of distant signal restrictions is inextricably related to the question of cable's copyright liability, and, as the DCRG acknowledges, is therefore contingent on enactment of copyright legislation for cable. Copyright legislation has been before the Congress for some time, but the issue of cable liability is far from settled. In my view, therefore, it is both premature and inappropriate to attempt a legislative solution of the distant signal problem at this time.

The pay cable question is of concern only to broadcasters, who fear the "siphoning" of their most popular programming and loss of audience. Program owners are unaffected since they receive full copyright payment for cable's origination of pay programming. While the FCC programming restrictions are patently arbitrary and the possibility of program siphoning is exaggerated for most types of programming, it is unnecessary to address this issue now, since the FCC's rules are being challenged in the courts and will most likely be judged illegal.

In addition, the DCRG indicates its proposed reforms would have a minimal effect in stimulating cable development. Given the controversial nature of their recommendations, the marginal utility of pursuing them seems questionable.

Finally, such legislation ignores and forecloses articulation of a considered Administration policy on



other less controversial, but equally important cable issues as discussed below. In fact, with its distant signal proposals delineated by market size, the bill proposed by the DCRG takes a "regulatory" approach, which seems inappropriate for a Presidential initiative.

The other DCRG options should also be rejected.

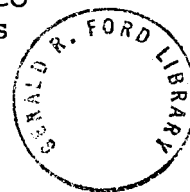
Publishing a White Paper on cable or testifying at congressional cable hearings would be mere rhetorical gestures toward a problem that cries out for a legislative solution. Chief Justice Burger in the landmark Midwest Video case, for example, recognized the inadequacy of the present statutory foundation for cable regulation, and called on Congress to fashion a legislative framework for cable as a medium in its own right. In the last two years, three major policy reports on cable communications have been published recommending the enactment of cable legislation, including the Cabinet Committee Report to the President on Cable Communications released in January 1974.

Publication of an additional "White Paper" or testifying in congressional hearings on cable would add nothing to the current discussion, would be unlikely to motivate administrative self-deregulation, would constitute an abdication of leadership by the Administration, and would be perceived as a capitulation to interest group pressures.

Recommended Approach.

As stated above, there is no adequate statutory basis for present cable regulation. The absence of statutory direction has permitted not only the ad hoc imposition of anti-competitive restrictions by the FCC for the benefit of cable's competitors, as recognized by the DCRG, but has allowed the unwarranted expansion of both Federal and non-Federal regulatory jurisdiction over cable, and the improper preemption of non-Federal cable authority by the FCC as well.

Thus, despite distinguishing media characteristics and the absence of a licensing requirement comparable to broadcasting, the FCC has preempted regulation of all "broadcasting" functions performed by cable and has applied broadcast type regulations respecting mandatory originations, program content, technical standards, ownership and operations, for example, that are inappropriate to the cable medium. The FCC's attempt to preempt similarly other non-video, point-to-point, and two-way communications functions through various



leased channel requirements was overturned by the Court of Appeals only last month.

In addition, the FCC has preempted unnecessarily traditional non-Federal responsibilities involving, among others, the qualification of cable operators, the local franchising process, and the adequacy of construction requirements and system design.

Despite extensive Federal preemption, non-Federal regulatory authorities have continued to develop cable regulations, however. Eleven states have special regulatory commissions for cable; in some states cable is regulated at both the municipal and state level. There are great disparities among the states not only as to the functions properly subject to regulatory oversight, but also as to the degree of necessary regulation. In short, cable regulation is clearly a growth industry.

As a result, the cable industry is faced with excessive, overlapping and unnecessary regulation at the Federal, State and local levels. Acknowledged to be a major problem by the cable industry and by representatives of State and local governments, it can only be resolved by Congress.

In my view, the only responsible course for the Administration is to submit cable legislation addressing the jurisdictional issue discussed above, and avoid the pay cable and distant signal questions at this time. This approach would be consistent with the recommendations of the Cabinet Committee Report on Cable Communications and with OTP's preliminary work in the cable deregulation area.



Cable TV

THE WHITE HOUSE INFORMATION
WASHINGTON

March 11, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON *Jani*
SUBJECT: Regulatory Reform: Cable T.V.

For the past several months, the Domestic Council Review Group has examined Federal regulation of the cable television industry as part of your regulatory reform program. This process of analysis included meetings with all the industries and special interest groups concerned with cable television and consultation with a panel of economists who are expert in the field.

The Congress and the Federal Communications Commission have also been reviewing Federal regulation of Cable T.V. The House Subcommittee on Communications recently issued a report calling for extensive de-regulation of cable and has indicated that it will hold hearings on the subject this Spring. In addition, several court cases are pending that challenge the FCC's regulation of cable.

We had planned to present by now options for your decision on this matter. However, review by the Senior Staff of a draft decision memorandum indicates that we need to do more work. I have, therefore, requested the staff members involved in this study to undertake more extensive analysis of the problem.

cc: Ed Schmults



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*Subj.
Comms. or
Reg. Reform*

THE WHITE HOUSE INFORMATION
WASHINGTON

March 11, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON *J.C.*
SUBJECT: Regulatory Reform: Cable T.V.

For the past several months, the Domestic Council Review Group has examined Federal regulation of the cable television industry as part of your regulatory reform program. This process of analysis included meetings with all the industries and special interest groups concerned with cable television and consultation with a panel of economists who are expert in the field.

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cc: Ed Schmults



Cannon
FYI

Q: Last Fall, the Domestic Council Review Group on Regulatory Reform (DCRG) held a series of meetings with interested industry representatives and public interest groups on the subject of de-regulating cable television. Why hasn't this effort produced legislative initiatives similar to those developed for the transportation industries? Has the Administration retreated from involvement in this issue as a result of opposition from the broadcast industry?

A: For the past six months a DCRG working group has reviewed FCC regulation of cable television as part of its overall reform effort to remove "anti-competitive" regulation. That effort has produced more questions than answers about the impact of the de-regulation of cable. More research is necessary to assess the effect on consumers of removing FCC restrictions. The Administration will continue its study of this matter and hopes that interested public service institution, the industries involved and the FCC, itself, will help undertake some of this research.

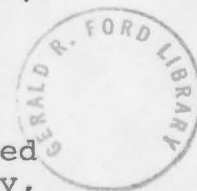
Background

Proposals to limit FCC regulation of cable television have circulated for years. President Nixon's Cabinet Committee on Cable Communications issued a report recommending cable de-regulation early in 1974.

For the past six months, a DCRG task force has been working to develop specific reform proposals for cable de-regulation. The House Subcommittee on Communications recently produced a report recommending drastic changes in the Federal regulation of cable and announced plans to hold two week hearings this Spring. (Chairman Torbert Macdonald's illness apparently has prevented this.) The Senate Communications Committee has also expressed an interest in holding hearings on cable. The FCC has reduced its regulation of cable in recent months, but several court cases are pending that challenge the remaining FCC regulation of cable.

The Domestic Council task force held a series of meetings with all the industries and special interest groups concerned with cable television in October and November. Subsequently, a panel of leading economists in the field of communications was convened by the task force to examine and make recommendations on this issue.

The DCRG's findings to date are that available data is insufficient to forecast the effects of cable de-regulation on (a) the cable industry (b) broadcasters or (c) consumers. Additional areas of study have been outlined in a memorandum from Paul MacAvoy to the DCRG



Ford Rejects Easing of Cable-TV Curbs

By DAVID BURNHAM

Special to The New York Times

WASHINGTON, April 7—After six months of study by the White House and intense lobbying by broadcasters, the Ford Administration has decided against recommending legislation aimed at permitting cable television to compete against over-the-air broadcasters.

According to Paul W. MacAvoy, a member of the Council of Economic Advisers, and John C. Rose, a Deputy Assistant Attorney General, the decision was reached by the

illegal umbrella against competition.

Mr. MacAvoy, a prime proponent of deregulation, said that the decision not to go forward with the cable proposal was made by the Domestic Council Review Group on Regulatory Reform.

Mr. MacAvoy acknowledged in an interview that there had been great pressure from the broadcasters aimed at stopping the Administration from making any legislative proposal. But he denied that this pressure had been decisive in the ultimate decision.

The industry screamed

Mr. Rose, who is with the Justice Department's Antitrust Division, also denied that the Administration decision represented a submission to industry.

Called 'Moving Target'

"I don't think it did," he replied, at the same time acknowledging that an election year never provides "the best climate for rational and dispassionate discussion of the issues."

Mr. Rose said that a major reason he had decided an Administration cable proposal this year would be "premature and unwise" was that the subject presented a "moving target."

The official cited the recent apparent changes in the Fed-

COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

ALAN GREENSPAN, CHAIRMAN
PAUL W. MACAVOY
BURTON G. MALKIEL

April 9, 1976

MEMORANDUM FOR ECONOMIC POLICY BOARD

FROM: Paul W. MacAvoy *Paul MacAvoy*
SUBJECT: Regulatory Reform in Cable Television
and Television Broadcasting

The Domestic Council Review Group on Regulatory Reform (DCRG) held a series of meetings in the last six months with industry representatives and public interest groups on the subject of deregulating cable television. The DCRG working group has also conducted its own analysis of the evidence on the effects of the FCC controls on this industry.

The efforts have produced more questions than answers about the impact of the deregulation of cable. The findings to date are that available data are insufficient to forecast the effects of cable deregulation on (a) the cable industry (b) broadcasters and ultimately on (c) consumers. Areas requiring additional work have been outlined in a memorandum from me to the DCRG. We will continue our work and we hope that interested public service institutions, the industries involved and the FCC, itself, will undertake some of this reasearch.



REQUEST
INFORMATION.
Communications

THE WHITE HOUSE

WASHINGTON

November 15, 1976

MEMORANDUM FOR:

JIM CANNON

FROM:

LYNN MAY *Lynn May*

SUBJECT:

Communications Policy



ISSUE

You asked me to re-examine the cable initiative developed by the Domestic Council Review Group on Regulatory Reform (DCRG) for possible action by the Ford Administration. Upon review of the matter, I do not see any value in resuscitating it as a specific issue at this time. I do, however, recommend that the President devote a portion of his State of the Union to address to the larger question of reforming Federal Communications regulatory policy, analogous to his position on transportation regulation.

BACKGROUND ON THE DCRG CABLE INITIATIVE

Last year, the DCRG examined the issue of cable de-regulation. Cable was targeted because the DCRG was seeking to expand its regulatory reform focus beyond the transportation field and because considerable research had been carried out in 1973 by a Cabinet Committee on Cable established by President Nixon and subsequently by the Office of Telecommunications Policy (OTP).

The DCRG developed a draft decision memo laying out the options for reviewing current FCC restrictions on the growth of pay cable television and the importation of long-distance signals by cable stations. The memo was subjected to considerable criticism from senior White House Staff members as being inimical to television broadcasting interests and thus untenable in an election year. The President, in a recent pre-election interview with the National Association of Broadcasters (NAB), stated that he had not been satisfied with the proposal and has asked the DCRG to reevaluate it and submit recommendations that were "more in line with my views."



In the face of this rebuff, the DCRG scrapped the initiative and turned off the support engendered by the initiative in academic and public interest circles by claiming that more economic evidence was required concerning the impact of cable analysis. It was assigned to the Office of Telecommunications Policy and is currently in process.

To resurface the cable initiative at this time without the economic evidence the DCRG requested would give credence to charges that the Administration backed down in the face of broadcaster opposition in an election year. It would also contradict the President's statement before the NAB. Moreover, the DCRG subsequently changed its tactics last year, shifting emphasis from specific initiatives to the development of a comprehensive regulatory reform plan. In May 1976 the President submitted legislation -- the Agenda for Government Reform Act -- establishing a four year agenda for the review of Federal regulation in major industrial categories including communications. Resuscitation of the cable initiative at this time would only detract from this omnibus approach which stands as a major Ford legacy to regulatory reform.

BACKGROUND ON COMMUNICATIONS POLICY

Federal communications regulatory policy will likely be subjected to a comprehensive review in the next few years, following the intent if not the timetable of the President's omnibus proposal. In the early years of radio broadcast and telephone technology, the Congress relinquished de-facto legislation authority over communications to the FCC, which in turn permitted the establishment of broadcast and telephone cartels to expand these services to consumers. New technologies, however, have blurred traditional boundaries between these industries. In order to fulfill its mandate of protecting established consumer services, the FCC has been forced to incrementally allocate markets and revenues between established, regulated communications industries and newer services like cable television and data processing communications. This cartel management has resulted in artificial price structures and has inhibited the development of new telecommunications services.

This year, the Subcommittees of both Houses, in reaction to the pressures by the conflicting industries, are contemplating a review of the Communications Act of 1974, the charter for the current regulatory structure, with an eye toward injecting the maximum of competition and consumer choice in the delivery of



communications services. The success of this endeavor will largely depend upon the willingness of the new Administration to support an action which is politically risky because of the enormous power of the broadcasting networks and AT&T to influence public opinion.

The struggle over the shape of the new communications regulatory structure will likely take several years. It may be carried out comprehensively or by piecemeal legislation. Its outcome will have a profound impact on our economy and our lifestyle. Specific issues which will be affected by the legislative review include: the variety and accessibility of television programming, the variety and cost of new data processing services, the location of an electronic funds transfer system (either in the private sector or in the Federal Government), the development of educational, health, and other public service forms of telecommunication services, etc.

RECOMMENDATION

The President could contribute to the resolution of this issue by focusing on it in the State of the Union Address, either as part of the regulatory reform section or by according it a separate chapter. Since the Ford Administration, unlike the Congress and the new Administration, is immune to the political retribution from special interest groups, we could play a valuable role in bringing this issue to the attention of the American people.

cc: Ed Schmults
Paul MacAvoy
Paul Leach

