



# Mixed Results for US Cable Law

The communications policy system gets tinkered with, but never infused with questions about its relationship to individuals, to the public and to the democratic dialogue. As a result, the 1992 Cable Act is simply another bandage on a deep civic wound that cries out for conceptualisation of cable television's place in people's lives during a time of technological convergence.

Nancy C Cornwell, University of Colorado

**The United States Cable Consumer Protection and Competition Act of 1992, which introduced a range of regulatory controls of the US cable industry seems like an interesting example of the recognition, by the ultimate free market society, that there are occasions when government must intervene.**

The legislation was the culmination of years of consumer problems with the cable services. Initially, it was hailed as a groundbreaking piece of legislation in favour of the consumer, but early experience suggests that this may have been premature.

In essence, the factors which led to legislation were:

- rising prices of cable services;
- complaints from subscribers on issues like quality of service, billing;
- the failure of some services to carry broadcast signals (most subscribers do not have television antennae and cable receivers do not have the capacity to access off-air signals).

Non-network broadcasters also urged must-carry rules for their services, complaining that cable companies were monopolising program sources.

In the first two of these areas, the new legislation took action by establishing guidelines for rate regulation and setting minimum customer standards.

## Rates Rising

On rate setting, the intention of the Act is to control the rates of cable systems operating in non-competitive markets. The Federal Communications Commission (FCC) can evaluate basic service rates in response to consumer complaints about unreasonable

charges. The catch is that 'basic service' is defined in the Act in a way which permits cable operators to move their channels around and avoid rate regulation on many of their services. Thus the basic service would include off-air signals and some access channels or C-Span, but not the premium and more desirable services like MTV and ESPN, which would therefore not be subject to rate regulation.

For many consumers, the new regulations have resulted in an increase in rates, particularly for basic services. One reason put forward is that rates for add-on equipment like remote controls have had to be separated out from program charges, while formerly the profits from these add-ons were subsidising basic cable rates.

The Act sets three criteria for the FCC to judge whether effective competition exists in an area: two cable companies operating head to head (a rare circumstance); a municipal franchising authority offering multi-channel video programming to at least 50 per cent of households; and fewer than 30 per cent of households subscribing to a system service rates in these markets set the benchmark for pricing.

What has now emerged is that the high charges in this last category skewed the overall average price structure of companies 'subject to effective competition'. As a result, regulation now cuts in where charges diverge from the mean by relatively small percentages. It also means that a 'reasonable' charge is higher than would otherwise have been the case.

The first challenge to the new rules came in the form of a challenge by the Turner Broadcasting System (CNN) to the must-carry provisions which specify that one third or more of channel capacity must be devoted to local

broadcast stations. The Supreme Court has been asked to rule on the constitutionality of this aspect of the Act under the First Amendment.

In framing the Act, Congress included a number of principles, like the dominance of broadcast over cable television and the importance of diversity of television sources, which were intended to shore up the Government's insistence that the must-carry rules should not offend against the First Amendment.

Another interesting side-effect of the new regulation has been the outcomes of negotiations by broadcasters for payment for the carriage of their signals by cable operators. NBC and ABC reached satisfactory arrangements with the cable operators which involved the creation of new cable channels by the broadcasters, straight-out payment or a deal on ad revenue sharing. CBS on the other hand held out for more and in the end got nothing: it will be carried under the rules, but will receive no payment.

Writing in the *IIC Journal Intermedia* (Aug-Sept 1993, 35-37), Nancy Cornwell of the University of Colorado comments that the problems with the Act do not signal inherent flaws in the principle of regulation, but a demonstration that the 'US communications regulatory process is structured in such a way as to neglect larger, more philosophical questions about the relationship between industry, technology, government and the public'.

Cornwell's conclusion, quoted at the head of this article, has strong resonances for countries like Australia and New Zealand which have been subject to upheavals in their broadcasting and telecommunications systems in recent years. □