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ABSTRACT

In order to give local officials the basic background information about cable television, this booklet suggests the essential steps and issues which help ensure that well informed decisions about cable systems are made. Not only does it provide a checklist for determining how a cable system should be established in compliance with federal regulations, but it also serves as a guide to areas where assistance may be needed. It sets forth a general view of the process by which issues may be considered, local legislation written, an operator selected, and the system constructed. The suggested procedure is arranged around the five phases of cable development: 1) organization; 2) study; 3) legislation; 4) applicant selection; and 5) supervision-enforcement. The booklet emphasizes the need for flexibility when formulating the overall development plan.
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CABLE TELEVISION INFORMATION CENTER
The Urban Institute
2100 M Street, N.W., Washington, D.C. 20037

PREFACE

This document was prepared by the Cable Television Information Center under grants from the Ford Foundation and the John and Mary R. Markle Foundation to The Urban Institute.

The primary function of the center's publications program is to provide policy makers in local and state governments with the information and analytical tools required to arrive at optimum policies and procedures for the development of cable television in the public interest.

INTRODUCTION

This guide suggests essential steps and issues which help ensure that well-informed decisions are made by those responsible for developing broadband communications systems for a community. The following discussion has two functions: first, it is a checklist in determining how a cable system should be established in compliance with federal regulation; and second, it is a guide to areas where assistance may be needed to assure a thoughtful process.

Its objective is to set forth for public officials a general view of a process by which issues may be considered, local legislation written, an operator selected and the system constructed.

The principal recommendation is that local officials take the initiative to decide the kind of cable system they want, rather than wait to decide between the alternatives others present.

This guide begins with a short discussion of federal guidelines and their impact on this process. This is followed by a suggested procedure, examined in each of the five phases of cable development: organization, study, legislation, applicant selection and supervision-enforcement. For each phase there is a list of issues or questions which must be resolved prior to that stage of cable development and the procedure for dealing with them.

The following is an outline of a suggested procedure:

A Suggested Procedure

- I. ORGANIZING PHASE
 - A. Develop Basic Understanding of Cable Issues
 - B. Select Mechanism for Study
- II. STUDY PHASE
 - A. Establish Study Procedures
 - B. Identify Issues for Study
- III. LEGISLATION PHASE
 - A. Identify Legal Restrictions on Local Regulation, Federal, State and Local Limitations
 - B. Establish Procedure for Writing and Enacting Ordinance with Public Participation
 - C. Draft Proposed Ordinance
 - D. Enact an Ordinance
- IV. APPLICANT SELECTION PROCESS
 - A. Decide How to Select Franchisee
 - B. Prepare Application Form
 - C. Develop Public Proceeding that will Afford Due Process
 - D. After Franchisee has been Selected, Determine What Tasks Remain before System Construction Begins
- V. SUPERVISION AND ENFORCEMENT PHASE
 - A. Determine Responsibility for Supervision and Enforcement
 - B. Develop Process for Operation of the Supervisory Body
 1. ARBITRATE DAY-TO-DAY DISPUTES
 2. REVIEW OVERALL SYSTEM OPERATION
 3. GUARANTEE COMPLIANCE WITH RESPECT TO OWNERSHIP AND CONTROL

Federal Regulation of Cable and Its Impact on the Local Process

Cable television, because it is a link in interstate communications, falls within the regulatory power of the Federal Communications Commission. The commission has set national policies and regulations which provide a framework for regulation. However, the most fundamental aspects of cable regulation, such as who will operate a system and what the boundaries of a service area will be, are questions determined by local governments. A local process must take into account the procedural requirements and standards set by the FCC for local regulation.

Specifically, the FCC order issuing the federal guidelines states that:

before a cable system commences operation with a broadcast signal, it must obtain a certificate of compliance from the Commission. The application for such a certificate must contain (Section 76.31 (a)(1) a copy of the franchise and a detailed statement showing that the *franchise authority has considered in a public proceeding the system operator's legal, character, financial, technical, and other qualifications, and the adequacy and feasibility of construction arrangements.* We expect that franchising authorities will publicly invite applications, that all applications will be placed on public file, that notice of such filings will be given, that where appropriate a public hearing will be held to afford all interested persons an opportunity to testify on the qualifications of the applicants, and that the franchising authority will issue a public report setting forth the basis for its action. Such public participation in the franchising process is necessary to assure that the needs and desires of all segments of the community are carefully considered.

A Suggested Procedure

I. ORGANIZING PHASE

A franchising authority has two organizing tasks: to develop a basic understanding of cable issues, and to select a mechanism to gather the information on which to base cable decisions.

A. Develop Basic Understanding of Cable Issues

Public officials will need to learn the basic dimensions of cable, what it is and how it works. They should understand the federal, state and local regulatory framework and give thought to the political, social, educational, economic and cultural implications for the community.

At this point in cable's development it is still possible to shape the technology to serve the public. To have a responsible influence public officials will want to understand cable communications and the issues that bear on the decisions they will be required to make.

B. Select Mechanism for Study

Consideration should be given to creating or identifying a mechanism to gather information on which to base well-informed cable decisions. Among the concerns involved are the study's intent and the talent needed to accomplish the study.

1. STUDY INTENT

The local franchising authority has responsibility for two critical decisions: the kind of system to be built, and who will operate it. Mechanisms such as

committees vary from those delegated responsibility for both functions to those limited to a very specialized area. Information gathering options include a full-scale feasibility study, a survey of the options available to the municipality or an in-depth study of selected issues. The study's scope is determined by the level of information considered necessary to make decisions, tempered by resource and time limitations.

2. TALENT NEEDED

Before selecting a study format, the community should examine the kinds of talent needed for the study and its availability. Technical skills essential to the understanding and development of a cable system fall into three basic areas: legal, engineering and financial. In addition, public administrative and urban analytical skills are essential in examining potential municipal use of a cable system.

All sectors of the community may be considered as resources for talent: government (elected officials and professional staff), school system (board members, administrators, teachers), university community, business and legal community, religious community, civic organizations.

Any talent needs, including consultants, which cannot be met on a volunteer basis should be detailed for budgetary requirements.

3. TYPES OF COMMITTEE STRUCTURES

a. *Local Governing Body Study Committee*

Local legislators have four basic areas of responsibility in regulating cable television: general investigation of the issues, passage of ordinances, selection of ownership, and supervision and enforcement of regulations applying to the system.

To fulfill these obligations, policy makers must obtain the necessary information on which to base decisions in each area. The data can be gathered and evaluated by a committee of the whole, a standing committee, or a specifically appointed ad hoc committee. The governing body may want a special study prepared by its professional staff or can consider commissioning a study.

b. *Internal Municipal Studies*

It is a common practice for governmental units to undertake self-contained studies of current issues. Some jurisdictions have research services which carry out studies on a regular basis; in others, the study may be done by a committee representative of city departments or under the direction of a single department—often the planning department or the office of the chief executive.

The purpose is to provide city officials with sufficient information to make decisions in the best interest of the municipality. The study can also serve to educate these officials and to collect information on possible municipal uses of the cable system.

c. *Public Study Commission*

Study commissions offer considerable flexibility because they can include members of the public to augment the skills available within the local government. Such a committee's membership includes elected officials and professional city staff together with educators, members of the business and legal communities, and representatives of community and civic groups.

The purpose of the commission's appointment can range from a full feasibility study to a survey of the community's sense about the utilization of cable television.

d. Regional Commissions

Because cable television is a communications medium with the capacity to interconnect with systems of adjacent governmental units, groups of neighboring communities often decide to evaluate cable communications issues from a regional perspective. The mechanism used for such an approach is generally one of the following:

i. An Existing Structure

Many communities belong to regional planning commissions or area councils of government—convenient structures for comprehensive area cable studies. Using an existing mechanism provides the immediate benefits of a regional perspective to local issues, and perhaps additional resources. Typically, this type of structure can be used only to study and plan cable systems, because the mechanism rarely has the legal authority to pass legislation or grant a franchise.

ii. A Structure Created Expressly for Cable Communications Study Group. Recently, some governmental units have joined together for the specific purpose of developing a regional plan for cable television. This usually has been effected by each participating municipality approving enabling legislation designating the city's representative(s) on the committee, allocating funds and defining the commission's purpose.

Study/Franchise Authority. In other instances, the intergovernmental cooperative venture could be expanded to grant a franchise, subject to the veto of each participating city. However, many state constitutional, statutory, and home-rule provisions preclude this type of action.

4. FUNDING

Budgets for cable committees vary greatly depending upon the scope of their responsibility, the expertise of their personnel, and the time available. The budget should, of course, be established by the committee in conjunction with the authorizing authority.

Factors to be considered when determining costs include professional and clerical support staff, outside consultancy, and public information materials.

The franchising authority need not be considered the sole source of funds. The federal government or local and national foundations may also be sources. In the future, funds may be available through state planning or development departments.

The selection of a study structure in a community marks the completion of the organizing stage. Using this process, the franchising authority will have assessed its interest in terms of cable and created a procedure for obtaining the information necessary for its decisions on the development of cable television.

II. STUDY PHASE

Because of the varied problems in municipalities and the different conceivable possible approaches, it is impossible to establish a complete list of cable issues to be studied. The committee should follow a procedure designed to maximize resources

and cover the broadest range of issues. The following study phase presents an approach to administrative problems and a list of substantive questions. These questions by no means exhaust the issues surrounding local involvement in cable development; they serve only to indicate the scope of the issues.

A. Establish Study Procedures

A study will not proceed easily or automatically. Its intent will be realized only if its scope and rationale are carefully determined, its budgetary and personnel requirements precisely established, and timing or duration carefully fixed. Before embarking on any study the cable committee should define with its authorizing body:

- * The reason for carrying out the study
- * How the study will be utilized
- * How the public will participate (public hearings)
- * Budget and staff for the study
- * Deadlines for the study

A useful procedure for coordinating a study to consider issues such as the ones identified below in B might include the following steps:

- * Breaking down issues into manageable areas
- * Establishment of study groups (subcommittees)
- * Determination of need and use of consultants
- * Establishment of study timetables
- * Public participation (workplan for public involvement, calendar and mechanism for involvement of advocate groups and general public, community education materials, publicity, circulation of final report)

B. Identify Issues for Study

1. WHAT KINDS OF SERVICES SHOULD A CABLE SYSTEM PROVIDE IN A COMMUNITY?

- * What kinds of services does cable technology now permit?
- * What are the technological developments that will affect the availability of future services as a cable system develops?
- * What services does the community desire?
- * What is the likely cost of supplying public services?
- * What possible sources of revenue (subscriber or non-subscriber) could support public services?

2. WHAT FEATURES OF SYSTEM DESIGN INFLUENCE CABLE COMMUNICATIONS SERVICES AND WHAT ARE THE RELATED COSTS?

- * What channel capacity will the community need?
- * What level of two-way capacity will the community require and when will increased two-way capabilities be needed?
- * How many program origination facilities will be required? Where should they be located?
- * Should the community consider channels designated for special purposes?
- * What costs do these issues of system design entail for the cable system and for the community?

3. HOW SHOULD THE SYSTEM BE DEVELOPED TO SERVE IDENTIFIABLE COMMUNITIES AND GROUPS?
 - * What are the socio-economic trends in the community?
 - * Do the service requirements dictate specific areas of service?
 - * How will possible service plans influence existing communities and redevelopment plans?
 - * What differences exist between a system designed for general residential subscribers and one designed to serve commercial and institutional users? How are their needs compatible?
 - * What aspects of the system's design need to be considered with regard to service areas and their use as a mechanism for centralization and decentralization?
 - * Is the system required to be technologically compatible for interconnection with others?
 - * What problems does any particular area of the city present in terms of construction and the time needed to extend service?
4. WHAT WILL BE THE FORM OF OWNERSHIP?
 - * Will there be one form or several, depending on the number of service areas?
 - * Will these include municipal, commercial, subscriber-owned, community nonprofit?
 - * What are the issues raised by encouraging local and minority participation?
 - * What impact would form of operation have on the economy and community in terms of revenues, employment and financing construction?
5. IF THE SYSTEM IS NOT OWNED BY THE LOCAL GOVERNMENT, WHAT PROCEDURES WILL BE NECESSARY FOR REGULATION?
 - * Who has been given responsibility for writing the ordinance?
 - * What kind of application form should be used?
 - * How will the applicants be selected?
 - * What enforcement and compliance procedures for rate review should exist for complaints from both channel users and subscribers?
6. IF THE SYSTEM IS OWNED BY THE MUNICIPALITY, WHAT REGULATORY PROCEDURES WILL BE NECESSARY?
 - * Will an ordinance be adopted to govern the municipality's own operation of the system?
 - * Will a city department operate the system? If so, how will problems related to government control of a communications system be resolved? If not, how will the system be operated?
7. THE ISSUES RAISED IN THE ORDINANCE OUTLINE PRESENTED IN THE LEGISLATIVE PHASE MUST BE EXAMINED

The completion of the study phase should give the local franchising authority sufficient information on which to base its decision concerning cable television. Once a direction has been clearly established, it is important to develop

sound legislation which will protect the rights of the franchising authority not only during the applicant selection process, but in the system's development and use.

III. LEGISLATION PHASE

In terms of impact, this phase of the process is the most vital. In the legislative process the franchising authority makes and formalizes its decisions about cable television. All provisions it considers necessary and important to its cable system must be embodied in this ordinance. *Requirements omitted from the ordinance, despite assurances to the contrary, can seldom be implemented.*

In the development of its legislation, the community might take the following measures:

- A. Identify Legal Restrictions on Local Regulation, Federal and State and Local Limitations
- B. Establish Procedural Mechanism for Writing and Enacting the Ordinance With Public Participation
- C. Draft Proposed Ordinance

The contents of the ordinance are, of course, a matter for local decision, but it might be organized as indicated:

1. PURPOSE OF THE ORDINANCE AND NATURE OF THE GRANT—
THE JURISDICTIONAL BASIS FOR THE FRANCHISING
AUTHORITY'S POWER
2. SHORT TITLE
3. DEFINITIONS
4. PROVISIONS GOVERNING THE LENGTH, RENEWAL AND
TRANSFER OF CERTIFICATE OR FRANCHISE
 - a. *Length of Franchise*
 - b. *Renewal*
 - c. *Transfers, Assignments*
5. FRANCHISE TERRITORY—EXTENSION OF SERVICE
6. SYSTEM DESIGN
 - a. *Channel Capacity*
 - b. *Channel Uses*
 - c. *Access Programming Facilities*
 - d. *Specialized Services—Point to Point Service*
 - e. *Two-Way Provisions and Subscriber Privacy*
 - f. *Interconnection*
 - g. *Underground and Aboveground Installation Requirements*
7. TECHNICAL PERFORMANCE STANDARDS
8. LOCAL REGULATORY FRAMEWORK
 - a. *Procedure for Day-to-Day Regulation*
 - b. *Functions to be Regulated*
 - i. Construction Timetables, Provision Of Service Upon
Consumer Demand

- ii. Legislation of Specialized Services
- iii. Maintenance and Alteration After Construction
- iv. Rates
- v. Franchise Fees
- vi. Employment Requirements
- vii. Consumer Complaints
- viii. Use of Streets, Pole Attachments
- c. *Method for Resolving Disputes*
- d. *Records and Reports, Notice of Documents Filed With Other Agencies*
- e. *Sanctions, Penalties, Enforcement*
- f. *Indemnification, Insurance, Liability for Damages*
- g. *Foreclosure, Receivership*

D. Enact an Ordinance

At this point, the franchise authority formally makes its decisions about the development of its cable television system and the purpose it will serve.

A strong, well written ordinance protects the franchising authority and assists the applicants in preparing relevant applications. It serves as the basis for the applicant selection process.

IV. APPLICANT SELECTION PHASE

The ordinance defines the relationship between the franchising authority and the cable operator. At the same time, the ordinance should prescribe the method for choosing the franchisee. The skilled use of a comprehensive application form in an open public proceeding can help ensure the selection of an appropriate operator for the system. This selection process can be bypassed only if the franchising authority has decided to develop a cable system under municipal ownership.

In the development of the applicant selection process, local officials must address a number of issues:

A. Decide How to Select Franchisee

1. THE FRANCHISING AUTHORITY

The franchising authority may wish to retain control throughout the entire application selection process and make the final decision on the franchise.

2. DESIGNATED AUTHORITY

The franchising authority may want to designate a citizens committee, city council subcommittee, or some other body to make recommendations regarding qualified applicants who should be considered to receive the franchise. Only rarely may a mayor, city council, or board of commissioners delegate its legislative authority to such an appointed group.

B. Prepare An Application Form

A detailed statement of the information which the franchise applicants will be required to furnish should be developed and used by each applicant. The more specific the requirements, the easier the selection unit's task of evaluating the application.

The application form must require information concerning the applicant's legal, character, financial, technical, and other qualifications. Additionally, the franchising authority must receive information relevant to the applicant's plans to provide adequate and feasible construction arrangements. The application form should reflect these and all other qualifications required by the ordinance.

If the franchising authority has decided to place particular emphasis on some areas of the application, it should make that decision known to all applicants and require explicit information relevant to those areas of emphasis.

C. Develop Public Proceeding that Will Afford Due Process

The FCC requires that a franchising authority consider a franchisee's qualifications to operate the system in a "full public proceeding" that will ensure that all interests in the community are carefully considered. To achieve fairness the commission has stated that the selection process under ordinary circumstances should include:

1. PUBLICLY INVITED APPLICATIONS
2. APPLICATIONS PLACED ON PUBLIC FILES
3. NOTICE GIVEN TO THE COMMUNITY OF FILINGS
4. AN OPPORTUNITY FOR ALL INTERESTED PERSONS TO TESTIFY ON THE APPLICANT'S QUALIFICATIONS (In this respect the commission has suggested that an appropriate means of offering this opportunity would be a public hearing)
5. A PUBLIC REPORT BY THE FRANCHISING AUTHORITY SETTING FORTH THE BASIS OF ITS ACTION

D. After Franchisee has been Selected, Determine What Tasks Remain Before System Construction Begins

1. WAIVER

If any of the franchise requirements are inconsistent with the FCC's rules, the franchising authority should ensure that the applicant will seek a waiver from the commission.

2. CERTIFICATION

The franchising authority should make certain that all the necessary steps for FCC certification are completed and the application for certification is filed promptly.

Once the franchising process is complete, many municipalities have considered their responsibilities ended. However, to ensure full use and development of a cable system, the city must continue to participate.

V. SUPERVISION AND ENFORCEMENT PHASE

The franchising authority should establish an efficient method of monitoring the construction and operation of the cable system and enforcing the ordinance and franchise requirements, proceeding as indicated below. However, the authority should be certain the issues considered here are first clearly specified in its ordinance.

A. Determine Responsibility for Supervision and Enforcement

- * A regulatory body created for the express purpose of monitoring all facets of the cable system

- * The city council or some established government committee
- * The office of a city official, i.e., mayor, city manager, or new department
- B. **Develop Process for Operation of the Supervisory Body**
 1. **DAY-TO-DAY ISSUES**
 - a. *Consumer Complaints*
 - b. *Disputes among City, Operator, and Consumers*
 - c. *Fair Employment Practices*
 - d. *Development, Management and Control of the Government Channel*
 - e. *Development of the Other Access Channels*
 - f. *Rates*
 - g. *Construction Timetables and Standards*
 2. **OVERALL OPERATION OF THE SYSTEM**
 - a. *Review of Finances for Rate Adjustment*
 - b. *Modernization of Technical Aspects*
 - c. *Ensuring Adherence to Amendments to Federal and State Regulations*
 3. **TRANSACTIONS CONCERNING OWNERSHIP OR CONTROL OF FACILITIES**
 - a. *Franchise Transfer and Transfer of Control of Ownership*
 - b. *Franchise Renewal*
 - c. *Franchise Revocation*
 - d. *Orderly Enforcement of Buy-Back or Lease-Back Provisions*
 - e. *Receivership and Foreclosure Provisions*

CONCLUSION

The above process, intended to be general in its description, rapidly becomes complex when each of the issues that are raised is translated into specifics by local communities. In approaching the consideration of cable the franchising authority should attempt to establish its own schedule for considering the many problems raised, rather than reacting to specific franchise applicants. Many issues will be politically and socially sensitive. Federal regulations are complex and continually under modification. New technology is constantly changing the state of the art. To appropriately consider the dynamic and exciting future that cable promises, a community will want to focus on two goals:

- * A system that meets present needs, yet is flexible enough to take advantage of future developments
- * Regulations that conform to federal requirements yet permit a community to control the development of the system so that it can accommodate changes in technology.