This is to certify that the

dissertation entitled

DIRECT COMPETITION IN CABLE TELEVISION DELIVERY--
THE MONTGOMERY, ALABAMA AND PARAGOULD, ARKANSAS EXAMPLES

presented by

Marianne Barrett

has been accepted towards fulfillment
of the requirements for

Ph.D. degree in Mass Media

Major professor

Date 8/19/93

PLACE IN RETURN BOX to remove this checkout from your record.
TO AVOID FINES return on or before date due.

DATE DUE	DATE DUE	DATE DUE
MAY 1 0 1995 D9S4043		
FEB 0 6 1996		
FEB 0 5 1997 008		
JUN 1 1 1997 FEB 0 2 1998		
NOV 0 2 1998		
MAR 0 8 1999		

MSU Is An Affirmative Action/Equal Opportunity Institution

c:\circ\datedue.pm3-p.1

DIREC
THE MONTO

in

Com

DIRECT COMPETITION IN CABLE TELEVISION DELIVERY-- THE MONTGOMERY, ALABAMA AND PARAGOULD, ARKANSAS EXAMPLES

BY

Marianne Barrett

A DISSERTATION

Submitted to
Michigan State University
in partial fulfillment of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

Communication Arts and Sciences - Mass Media

1993

DIREC
THE MONT

Cable

considered

the long ru

challenged

of competit

constraints

"natural" c

an effort t

out of cont

Cable Telev

1992. In i

of Rates, C

a means of

technology

As of

could be fo

States. Th

Paragould,

approach to

cable telev

market cond

competition

ABSTRACT

DIRECT COMPETITION IN CABLE TELEVISION DELIVERY-- THE MONTGOMERY, ALABAMA AND PARAGOULD, ARKANSAS EXAMPLES

By

Marianne Barrett

Cable television in local markets has historically been considered a natural monopoly with competition infeasible in the long run. However, this has been successfully challenged in the courts. Some scholars argue that the lack of competition in local markets is due more to artificial constraints placed on would-be entrants than on any "natural" characteristics of cable television delivery. In an effort to rein in an industry that is widely viewed as out of control, on October 5, 1992, Congress passed the Cable Television Consumer Protection and Competition Act of 1992. In its policy statement and Section 623, Regulation of Rates, Congress stated its preference for competition as a means of "promoting a diversity of views through multiple technology media".

As of October, 1992, direct head-to-head competition could be found in about forty communities in the United States. Through case studies of Montgomery, Alabama and Paragould, Arkansas, this dissertation takes a microanalytic approach to the issues associated with direct competition in cable television. This dissertation determines which of the market conditions that the literature suggests impact competition occur in these situations and which of these

conditions

also outlin

of competit

The cas

Montgomery

cable operat

response to

engaged in

attempt to

entrant to

also address

competition

resulted in

subscribers.

which this c

likelihood o

the disserta

to other mar

conditions are the most critical to successful entry. It also outlines additional factors that affect the feasibility of competition in cable.

The case studies consider the political climate in Montgomery and Paragould as it relates to entry by a second cable operator, examine the behavior of the incumbent in response to entry by a rival, assess whether the incumbent engaged in price cutting, entered into litigation in an attempt to prevent entry and/or attempted to subject the entrant to stringent franchise requirements. The studies also address how the entrant has reacted, on what dimensions competition has occurred, and whether this competition has resulted in improved service and/or lower prices for subscribers. Finally the studies determine the extent to which this competition has been successful, and assess the likelihood of its continuation. One of the objectives of the dissertation was to gain information that can be applied to other markets and used to address public policy.

TO RAY

The au
encourageme
Baldwin, co
His guidanc
successful

Specia
advice give
Additional
Department
committee fo
author is al
Telecommunic
the completi

Thanks
Ph.D. progra

This di
the cooperat
Paragould, A
and to provi
appreciated.

ACKNOWLEDGMENTS

The author is especially appreciative of the encouragement, support and generosity provided by Dr. Thomas Baldwin, committee chair and director of this dissertation. His guidance throughout the entire Ph.D. program made the successful completion of this degree possible.

Special thanks is also expressed for the dedication and advice given by Drs. Bruce Allen and Bonnie Reece. Additional thanks to Dr. Barry Litman, chair of the Department of Telecommunication and member of the guidance committee for his continuing understanding and support. The author is also indebted to the Department of Telecommunication and ITS Lab staffs for their assistance in the completion of this dissertation.

Thanks also to Todd Simon, Director of the Mass Media Ph.D. program.

This dissertation would not have been possible without the cooperation of the people of Montgomery, Alabama and Paragould, Arkansas. Their willingness to be interviewed, and to provide documentary information is greatly appreciated.

By

also con

degree.

Fina

Bryn prov

entire pr

By providing worry-free childcare, the Womble family also contributed significantly to the completion of this degree.

Finally, the author's husband, Ray Pernot and daughter Bryn provided balance and a sense of normalcy throughout the entire process. For that and so much more, thanks.

CHAPTER

TABLE OF CONTENTS

CHAPTER
VIII

IX

CHAPTER X

TABLE

1

2

3

4

5

6

LIST OF TABLES

Cable

considered

the long r

challenged

Communicat

scholars a

is due mor

entrants t

television

an industr

federal go

October 5,

Senate vot

Television

(S.12). I

Regulation

competitio

---

[1] Pref

Angeles, C

CHAPTER I
INTRODUCTION

Cable television in local markets has historically been considered a natural monopoly with competition infeasible in the long run. However, this has been successfully challenged in the courts in cases such as Preferred Communications, Inc. v. City of Los Angeles, Cal.[1]. Some scholars argue that the lack of competition in local markets is due more to artificial constraints placed on would-be entrants than on any "natural" characteristics of cable television delivery. Additionally, in an effort to rein in an industry that is widely viewed as out of control, the federal government began to reregulate cable television. On October 5, 1992, both the House of Representatives and the Senate voted to override President Bush's veto of The Cable Television Consumer Protection and Competition Act of 1992 (S.12). In Section 2, Policy Statement and Section 623, Regulation of Rates, Congress stated its preference for competition as a means of "promoting a diversity of views

[1] Preferred Communications, Inc. v. City of Los Angeles, Cal. 754 F.2d 1396 [1985].

through

viabilit

programm

nonexclu

As c

could be

States.[4]

as an "ov

"cable te

systems i

area."[5]

---

[2] Cab
Act of 199
102-385,"

[3] Mary
Veto Expec
A3 and A4.
The Wall St

[4] See
is competit

[5] "Cab
70:2, Febru
Ther
independent
a similarl
Michigan wh
operate com
competing a
Montgomery,
Storer/TCI
with an msc
time and it
agreement"
another. 4.
Niceville, F
municipal s

through multiple technology media."[2] To further the viability of that competition, the Act contains access to programming requirements and encourages the granting of nonexclusive franchises.[3]

As of October, 1992 direct head-to-head competition could be found in about forty communities in the United States.[4] This type of competition is commonly referred to as an "overbuild" and is defined as a situation in which "cable television service is offered by two or more cable systems in direct competition within the same service area."[5]

---

[2] Cable Television Consumer Protection and Competition Act of 1992, sec. 2 and 623, "Statutory Supplement Public Law 102-385," U. S. Code Annotated (December 1992).

[3] Mary Lu Carnevale, "Congress Clears Cable TV Bill; Veto Expected," The Wall Street Journal, September 23, 1992, A3 and A4.
_________, "Bush's Veto of Cable Bill is Overturned," The Wall Street Journal, October 6, 1992, A3 and A6.

[4] See Appendix A for a list of markets in which there is competition among cable television operators.

[5] "Cable Television Regulation", Congressional Digest 70:2, February 1991, 36.
There are essentially five types of overbuilds: 1.) an independent owner/operator of a few systems competing against a similarly-sized rival. An example of this is Monroe, Michigan where Blade Communications and James Cable partners operate competing systems. 2.) an independent owner/operator competing against a large multiple system operator (mso). Montgomery, Alabama where Montgomery Cablevision competes with Storer/TCI is this type of overbuild. 3.) a mso competing with an mso. There are no examples of this at the present time and it is widely believed that there is a "gentleman's agreement" between msos that they will not overbuild one another. 4.) a city-owned system competing with a large mso. Niceville, Florida which is about to begin construction of its municipal system in competition with Time-Warner Cable is an

Altho

all cable

that giver

Economist

interactio

franchises

and the re

market con

Smiley as

are intens

differentia

cabling the

firms. Add

incumbent

overbuilder

combination

to which co

Throug

---

example of
system comp
Michigan wh
is an examp

[6] Albe
Television
U.S. Depar
Analysis Gr
the feasibi
occurs simu

[7] Harry
Cablevision
Michigan, S

Although overbuilds exist in less than one percent of all cable franchises, the fact that there are any suggests that given certain conditions competition is possible. Economist Albert K. Smiley modelled the competitive interaction of two cable operators with overlapping franchises and found that both the degree of overbuilding and the resulting welfare effects are highly sensitive to market conditions.[6] Among the market conditions cited by Smiley as impacting competition in cable television delivery are intensity of demand, the ability of the entrant to differentiate its product from the incumbent, the cost of cabling the community and the strategic interaction between firms. Additionally, the entrant should anticipate that the incumbent will act to thwart that competition. One overbuilder suggested that it is market conditions in combination with political forces that determine the extent to which competition between cable operators is feasible.[7]

Through case studies of the Montgomery, Alabama and

---

example of the fourth type of overbuild. and 5.) a city-owned system competing with an independent operator. Negaunee, Michigan where the city competes with Bresnan Communications is an example of this.

[6] Albert K. Smiley, "Direct Competition Among Cable Television Systems," Discussion paper 86-9, Washington DC: U.S. Department of Justice, Antitrust Division, Economic Analysis Group (EAG), June 5, 1989, 2. Smiley also noted that the feasibility of competition is dependent on whether entry occurs simultaneously or sequentially.

[7] Harry P. Cushing, III, President and CEO of Telesat Cablevision, Inc., telephone interview by author, Lansing, Michigan, September 1, 1992.

Paragoul

microana

competit

answerin

1.)

2.)

3.)

4.)

5.)

6.)

7.)

S

d

8.) I

In Mo

an establi

interview,

stated that

in federal

Storer/TCI,

(mso).[8] Mo

political f

compete in

---

[8] Rush

Michigan, A

Specif

two ordinar

other which

program con

CableVision

Paragould, Arkansas markets, this dissertation takes a microanalytic approach to the issues associated with direct competition in cable television. The studies focus on answering the following research questions:

1.) Which of the market conditions outlined in the literature as favoring competition exist in "real world" situations?
2.) Which of these factors seem to be the most critical?
3.) How does the political climate impact competition? Specifically do the franchising authority's policies encourage competitive entry?
4.) On which of the following dimensions does competition occur? Price? Service? Programming?
5.) What has been the response of the incumbent to competition?
6.) How has the entrant countered that response?
7.) What has been the effect on consumers? Specifically, have prices for cable service decreased? Has service and/or programming improved?
8.) Is competition likely to continue in the long-run?

In Montgomery, an independent operator is overbuilding an established multiple system operator. In a preliminary interview, Rush Rice, President of Montgomery CableVision, stated that the key issue faced by his company is litigation in federal court against the anticompetitive behavior of Storer/TCI, the nation's largest multiple system operator (mso).[8] Montgomery illustrates some of the market and political factors that are evident when two operators compete in a single geographic area.

---

[8] Rush Rice, telephone interview by author, Lansing, Michigan, August 31, 1992.

Specifically, Storer/TCI sued the City of Montgomery over two ordinances, one which limits price competition and the other which prohibits the company from entering into exclusive program contracts with cable networks like ESPN. Montgomery CableVision joined in the lawsuit on behalf of the city.

Pa

municipa

Paragoul

has been

March, 1

of compe

basis of

Amendment

The

status of

which an

municipal

provide ca

private co

<u>Rationale</u>

The c

because it

approach to

is particul

on franchis

E. Williams

> the co
> econom
> unders
> be sup
> the in

9 The
allows a mu
competition

Paragould, Arkansas is one of the few examples of a municipal overbuild of a private operator. The City of Paragould through its Commission of Light and Water (CLW) has been competing with Cablevision Systems, Inc. since March, 1991. The issues associated with municipal ownership of competitive cable systems include legal challenges on the basis of antitrust, the due process clause of the Fourteenth Amendment, and the First Amendment.

The history of the Paragould case and the current status of the overbuild illustrate the type of behavior in which an incumbent engages to thwart competitive entry by a municipality and the legal conditions under which a city can provide cable television service in competition with a private company.[9]

Rationale for the Study

The case study was chosen as the method of inquiry because it enables the researcher to take an in-depth approach to complex issues. Competition in cable television is particularly well-suited to this method. In an article on franchise bidding in cable television, economist Oliver E. Williamson quoted from Bauer and Walters:

> the complexity, instability and local variation of many economic phenomena imply that the establishment or understanding of relationships requires that analysis be supplemented by extensive observation and also that the inquiry must often extend beyond statistical

---

[9] The 1992 Cable Act has a provision which expressly allows a municipality to own and operate a cable system in competition with a private operator.

info
sourc

Thoma

researche

advice and

study appr

process in

1970s, G.

process in

the Sacram

overbuilds

method to

study has

be an incr

operators

the
tele
flow
exte
of o
new
wire
syst

Whil

concernin

---

[10] Ol
monopolie
Journal o

[11] Th
in a Po
Veljanovs
1989), 21

> information to direct observation and use of primary sources.[10]

Thomas W. Hazlett, arguably the most widely published researcher on competition in cable, followed Williamson's advice and examined two duopolistic markets using the case study approach. Williamson's case study of the franchising process in Oakland, California in the late 1960s and early 1970s, G. Kent Webb's 1983 study of the franchise bidding process in Philadelphia, and Hazlett's 1987-1988 study of the Sacramento, California and Orange/Dade County, Florida overbuilds are the only academic studies that have used this method to examine cable television. To date, only Hazlett's study has looked at overbuilds. He believes that there will be an increase in direct head-to-head rivalry between cable operators because of

> the increased availability and acceptance of pay television that improves an operator's internal cash flow and enhances the operator's ability to secure the external financing necessary to support the development of overbuild franchises; the lack of availability of new franchises as the majority of the U.S. becomes wired; and the increased cost of purchasing an existing system as opposed to constructing a new one.[11]

While much of the case law and other research concerning cable overbuilds, both municipal and private,

---

[10] Oliver E. Williamson, "Franchise bidding for natural monopolies--in general and with respect to CATV" The Bell Journal of Economics 7:1 (Spring 1976), 101 and 102.

[11] Thomas W. Hazlett, "Cabling America: Economic Forces in a Political World" in Freedom in Broadcasting Cento Veljanovski, ed. (London: Institute of Economic Affairs, 1989), 215.

focuses o
concentra
associate
in local r
theory. C
competitic
summarizes
status of
outlines f
feasibilit
type of st
oligopolis
of the met
Chapters V
and Parago
the findin
further re

focuses on first amendment issues, this dissertation concentrates on the economic and political factors associated with direct competition between cable operators in local markets. Chapter II discusses natural monopoly theory. Chapter III reviews the literature which examines competition in cable television delivery. Chapter IV summarizes the case law concerning the natural monopoly status of cable television in local markets. Chapter V outlines franchise policy and discusses how it affects the feasibility of direct competition. Chapter VI details the type of strategic behavior one is likely to see in oligopolistic markets. Chapter VII discusses the specifics of the method used to answer the research questions. Chapters VIII and IX report the results of the Montgomery and Paragould studies respectively. Chapter X summarizes the findings, offers conclusions and suggests topics for further research.

The t

complex.

economic t

. . . exce

concepts a

of scale,

contestabi

addressed

Economies

Econo

average co

increases.

economy of

television

economies o

measured or

[1] Haro
Law and Eco

[2] Edwi
Fourth Edit
228 and 229
Bruce
Harper & Ro

CHAPTER II
NATURAL MONOPOLY THEORY

The theory of natural monopoly is contradictory and complex. In the words of economist Harold Demsetz, "the economic theory of natural monopoly is exceedingly brief and . . . exceedingly unclear."[1] There are four critical concepts associated with this theory. They are: economies of scale, including size, density and scope; subadditivity, contestability, and sustainability. Each concept will be addressed in turn.

Economies of Scale

Economies of scale refer to cases where the long-run average costs of producing a product decline as output increases.[2] Economies of density are a distinct type of economy of scale and are particularly relevant to cable television delivery in local markets. Hazlett defines economies of density as "scale economies where volume is measured on a per mile or per number of homes passed basis

---

[1] Harold Demsetz, "Why Regulate Utilities?" Journal of Law and Economics 11: April 1968, 56.

[2] Edwin Mansfield, Priniciples of Microeconomics, Fourth Edition, (New York: W.W. Norton & Company, 1983), 228 and 229.
Bruce T. Allen, Managerial Economics, (New York: Harper & Row Publishers, 1988,) 275.

rather

scope r

differe

their p

firm."[4]

outputs

Convers

is refe

respect

premium

Channel

multipr

Ma

natural

the pre

noted,

natural

characte

early th

scale a

---

[3] T
Interest
Franchis
1986, 13

[4] W
Willig,
Structur
1982), 7

rather an on an absolute size standard."[3] Economies of scope refer to "the simultaneous production of several different outputs in a single enterprise, as contrasted with their production in isolation, each by its own specialized firm."[4] When a firm produces those several different outputs simultaneously, it is known as a multiproduct firm. Conversely, a firm which produces only one output at a time is referred to as a single product firm. For example, with respect to cable television, when an operator provides premium services such as Home Box Office and the Disney Channel as well as a package of basic services it is a multiproduct firm and enjoys economies of scope.

Many who argue that cable television delivery is a natural monopoly in local markets base their contentions on the presence of economies of scale. However, as Sharkey has noted, while the presence of such economies may suggest a natural monopoly, "one important extension to [the characteristics of natural monopoly as developed by the early theorists] is the realization that simple economies of scale are neither necessary nor sufficient for natural

---

[3] Thomas W. Hazlett, "Private Monopoly and the Public Interest: An Economic Analysis of the Cable Television Franchise," University of Pennsylvania Law Review 134: 1335, 1986, 1364 note 104.

[4] William J. Baumol, John C. Panzar and Robert D. Willig, Contestable Markets and the Theory of Industry Structure (New York: Harcourt, Brace, Jovanovich, Inc., 1982), 71.

monop

autho

indus

In fa

if a

more

"most

impos

simpl

Subad

econo

subadd

necess

5
(Cambr

6

7

8
Economi
1341.

monopoly."[5] Additionally, he points out that not all authors agree that natural monopolies are primarily in industries in which there are pervasive economies of scale. In fact, "some have noted that there can be natural monopoly if a single firm can produce more efficiently than two or more firms in the absence of economies of scale."[6] And, "most authors have recognized that it is difficult or impossible to label a given industry a natural monopoly by a simple measure of economies of scale."[7]

Hazlett writes,

> nearly a century ago , the existence of economies of scale was established by some theorists at the sine qua non of natural monopoly. While such economies are sometimes still cited by regulators to justify certain public utility and other regulatory arrangements, the economic literature no longer recognizes such economies as logically necessitating the existence of a monopoly.[8]

Subadditivity

Subadditivity is a concept that is closely related to economies of scale. To Sharkey and others, it is subadditivity rather than economies of scale that is necessary for a natural monopoly to exist in a particular

---

[5] William W. Sharkey, The Theory of Natural Monopoly (Cambridge: Cambridge University Press, 1982), 15.

[6] Ibid., 20.

[7] Ibid.

[8] Hazlett, "Private Monopoly and the Public Interest: An Economic Analysis of the Cable Television Franchise," 1340 and 1341.

market.

produce

combinat

defined i

the effic

industry.

is necess

producer

(emphasis

outcome o

competitic

Posne

relevant m

rather tha

monopoly,

if such a

firms will

failures,

resources

that so lo

demand mos

that the m

[9] Shar

[10] Ibi

[11] Ri
Regulation,

market. Subadditivity is present when a single firm can produce the desired output at a lower cost than any combination of two or more firms. "Natural monopoly is then defined in terms of a single firm's efficiency relative to the efficiency of other combinations of firms in the industry."[9] Further, "for the monopoly to be natural, it is necessary that a single firm remain as the most efficient producer _if_ the restrictions on competition are removed." (emphasis added) And, "natural monopoly is itself the outcome of the competitive process under ideal competition."[10]

Posner has written, "if the entire demand within a relevant market can be satisfied at lowest cost by one firm rather than by two or more, the market is a natural monopoly, whatever the actual number of firms in it." And, if such a market contains more than one firm, either the firms will quickly shake down to one through mergers or failures, or production will continue to consume more resources than necessary.[11] In either case, Posner asserts that so long as a single firm can meet the market's entire demand most efficiently, one can be reasonably confident that the market will shakedown to a single firm, at least if

---

[9] Sharkey, op.cit., 54.

[10] Ibid., 54-56.

[11] Richard A. Posner, "Natural Monopoly and Its Regulation," _Stanford Law Review_ 21: February, 1969, 548.

there are

merger.[12]

to test w

<u>unrestric</u>

crucial i

discussed

Baum

the subadd

which giv

subadditi

analytica

> ther
> suff
> simp
> suba
> <u>ever</u>
> is w
> <u>ever</u>

That suba

that nat

<u>Sustainab</u>

The

closely r

sustainab

following

---

[12] Il

[13] Ba
lengths
sufficien
However,
For detai

there are no undue inhibitions on price competition or merger.[12] Both Posner and Sharkey imply that the only way to test whether a market is a natural monopoly is to give unrestricted competition a try. This is a notion that is of crucial importance in cable television delivery and will be discussed at length in the section on franchising.

Baumol, Panzar and Willig agree with Sharkey that it is the subadditivity of costs rather than economies of scale which give rise to natural monopolies. They state while subadditivity may be an intuitively appealing concept, it is analytically elusive. In fact, they find that

> there exist no conditions that are necessary and sufficient for subadditivity that are analytically simpler than the definition. . . To prove subadditivity, we must have information on the costs of every potential small or intermediate producer and that is why we must know the cost function of a firm for every $y^* \le y$.[13]

That subadditivity is so difficult to establish suggests that natural monopolies may be quite rare.

Sustainability and Contestability

The sustainability and contestability of markets are closely related concepts. Baumol, et. al. describe a sustainable industry configuration as one which has the following properties:

---

[12] Ibid., 612.

[13] Baumol, et. al, op. cit., 170, 171. The authors go to lengths to provide some conditions that they consider sufficient and others that are necessary for subadditivity. However, their proofs are beyond the scope of this proposal. For details see Baumol, et. al., 171-186.

1.)
in q
the
yiel
than
must
prof
of t

In t

comprised

demonstra

operates

normal ra

Sharkey a

entrants

behave in

Further, B

monopolist

achieving

sustainabl

A con

competitic

can be onl

---

14 Ibi

15 Sha
sustainabl
monopolist
nonnegativ
portion of
Shark

16. Ba

17 Sh

> 1.) the quantities demanded by the market at the prices in question must equal the sum of the outputs of all the firms in the configuration; 2.) the prices must yield to each active firm, revenues that are no less than the cost of producing its outputs; and 3.) there must be no opportunities for entry that appear profitable to potential entrants who regard the prices of the incumbent firms as fixed.[14]

In the case of a natural monopoly, only a configuration comprised of a single seller can be sustainable. But it is demonstrably sustainable if and only if a natural monopolist operates in an efficient manner and earns no more than a normal rate of return on its capital investments.[15] Sharkey and Baumol, et. al. rely on the ability of potential entrants to exert pressure on the incumbent monopolist to behave in a manner in which consumer welfare is maximized. Further, Baumol, et. al. suggest that if the natural monopolist is not operating in an efficient manner and/or is achieving supernormal profits, the monopoly will not be sustainable and the market will be contestable.[16]

A contestable market is one "in which potential competition operates in an ideal form."[17] Although there can be only one active firm in an efficient natural monopoly

---

[14] Ibid., 5.

[15] Sharkey states, "a natural monopoly is said to be sustainable if a price-output pair exists such that the monopolist satisfies all demand at the quoted price, earns nonnegative profits and no rival firm would wish to enter any portion of the monopolist's market."
Sharkey, op. cit., 151.

[16]. Baumol, et. al., op. cit., 6.

[17] Sharkey, op. cit., 145.

market, m
would be
ultimatel
produce a
outputs d
the susta
depends t
potential
the case
competiti
effective
Coursey,
openly a
to suppl
However,
should t
monopoly
radical
the cas
of the
by muni
market,
franchi

18
Smith,"
Experin
April,

market, many inactive firms may exist. These inactive firms would be willing and able to enter into competition with and ultimately replace the incumbent firm if that firm does not produce at the lowest possible cost or produce the set of outputs desired by consumers. The contestability as well as the sustainability of a natural monopoly market then depends to a great extent on the efficacy of the process of potential competition. To Coursey and his colleagues, in the case of contestable markets, potential entry or competition for the market disciplines behavior almost as effectively as would actual competition within the market. Coursey, et. al. assume that at least two firms bid freely, openly and directly for buyer purchases and that the right to supply the market is won by the lowest price bidder.[18] However, because the market itself does not function as it should to ensure satisfactory performance, many natural monopoly markets are subject to regulation, a factor that radically reduces the threat of entry by a competitor. In the case of cable television, entry is restricted by virtue of the franchise requirement imposed on would-be operators by municipalities and while operators may bid for the market, they do so not directly to buyers but through the franchise authority.

---

[18] Don Coursey, R. Mark Issac, and Vernon L. Smith,"Natural Monopolies and Contested Markets: Some Experimental Results," <u>The Journal of Law and Economics</u> 27: April, 1984, 92,93.

A se

the entry

without c

of large

sunk if t

productio

argued th

headend a

example,

system is

hundred m

an invest

recouped

sunk cost

lead one

contestab

Whet

cable tel

debate.

establish

Sustainab

at least

of the in

doubtful

distribut

---

[19] Ba

A second requirement for a contestable market is that the entry process be entirely or almost entirely reversible without cost. Sharkey and Baumol, et. al. cite the presence of large sunk costs as one key barrier to entry. Costs are sunk if they cannot be eliminated even with the cessation of production.[19] In the case of cable television, it can be argued that those costs are substantial and include the headend as well as most of the distribution network. For example, the average cost of constructing an aerial cable system is approximately $13,500 per mile. A system with one hundred miles of plant is considered small but, represents an investment of $1,350,000, an investment that cannot be recouped if the project is abandoned. These significant sunk costs subsequently become a barrier to exit and would lead one to conclude that cable television delivery is not a contestable market.

Whether this should also lead one to conclude that cable television delivery is a natural monopoly is open to debate. Subadditivity may exist but it is as difficult to establish in the cable industry as elsewhere in the economy. Sustainability is questionable because of the willingness, at least in some local markets, of a rival to enter portions of the incumbent's market. The contestability of cable is doubtful because of the large sunk costs associated with the distribution of the service. And, the contestability of

---

[19] Baumol, et. al. op. cit., 280.

cable ma

restricti

requireme

be a monc

have beer

theory tc

the follc

cable markets is largely untested because of the restrictions on entry that exist in the form of franchise requirements. Cable television delivery in most markets may be a monopoly, but not necessarily a natural one. There have been several studies which apply natural monopoly theory to this industry. Those studies will be discussed in the following chapter.

Ther

competiti

consists

applies n

turn.

Empirical

The

structure

this mode

service b

situation

cited as

studies c

one of hi

that in c

there wer

would be

Primeaux

duopolist

[1] Wa
Monopoly,

CHAPTER III
REVIEW OF THE RELEVANT LITERATURE

There are two bodies of literature which examine competition in cable television delivery. The first consists of empirical studies of overbuilds and the second applies natural monopoly theory. Each will be discussed in turn.

Empirical Studies of Overbuilds

The industrial organization model looks at how market structure impacts a firm's conduct and performance. Under this model, the expectation is that price will be lower and service better in competitive versus monopolistic situations. The electric utility industry is frequently cited as a model of natural monopoly. Yet, there have been studies of competition in this industry. For example, in one of his studies, economist Walter J. Primeaux, Jr. found that in cases where there is competition between two firms, there were lower average costs of production than there would be in the absence of competition.[1] In a later study, Primeaux found substantial price differences between duopolistic and monopolistic electric utility markets.

---

[1] Walter J. Primeaux, Jr., "Some Problems with Natural Monopoly," The Antitrust Bulletin, Spring, 1979, 68.

> The marginal price between the 500 and 750 kilowatt blocks is lower by 16 percent, the marginal price between the 750 and 1000 kilowatt blocks is lower by 19 percent and the average price is lower by 33 percent because of competition.[2]

Only a few studies have empirically tested the effect of competition on price and service in local cable markets. In 1982, John Mansell questioned whether overlapping franchises improved the variety of service offerings or the speed of expanded service introduction over that provided by a single operator. While citing a list of thirteen then current overbuilds, he noted that Allentown, Pennsylvania "is the single case of a 'successful' overbuild" and that "the situation has resulted in both companies offering essentially the same service for the same price."[3] Further, Mansell contended that the problems associated with overbuilds include signal leakage, disruption of the public domain, such as city streets, construction delays and protracted litigation that may involve the franchise authority.[4]

---

[2] Walter J. Primeaux, Jr., "Estimate of the Price Effect of Competition The Case of Electricity," Resources and Energy 7, 1985, 338.

[3] John Mansell, "Overbuilds and redistricting" in Guide for Local Policy, Nancy Jesuale, ed., CTIC Cablebooks Volume II, (Arlington, Virginia: Cable Television Information Center, 1982), 43.

[4] Ibid., 45.
The problem of signal leakage that Mansell identified as one of the negatives associated with overbuilds has been significantly reduced as technology has improved. With the increased deployment of fiber optic transmission lines, the problem of signal leakage will become a non-issue.

Al

little

others

plentif

In

franchi

Home Bo

than th

Th

particu

basic

post-re

noncom

channe

"The c

servic

Additi

market

5

"More

T

benefi

servic

6

in Cab

April,

7

Politi

Although Mansell suggests that the consumer has gained little from competition, at least in the case of Allentown, others have found that rates are below average, channels are plentiful and the service superior.[5]

In one of his studies, Hazlett found that duplicative franchise systems' rates for basic and the premium service, Home Box Office, were estimated to be $1.82 a month lower than those in monopolistic jurisdictions.[6]

The 1984 Cable Act largely deregulated cable, particularly the rates that an operator can charge for the basic level of service. Hazlett was the first to include post-regulatory data in a study of prices in competitive vs. noncompetitive markets. He found that prices and prices per channel were substantially lower for overbuilt systems. "The combined monthly package [of basic plus one premium service] is nearly 24 percent less under competition."[7] Additionally, "the price of basic cable in competitive markets dropped by an average of 41.5 percent from their

---

[5] For example see Mark Lewyn and Julie Amparano Lopez, "More Choice for Cable TV?" Business Week May 13, 1991, 44.
The Allentown case is frequently cited as example of the benefits of competition in the provision of cable television service.

[6] Thomas W. Hazlett, "Competition vs. Franchise Monopoly in Cable Television," Contemporary Policy Issues Volume IV, April, 1986, 91.

[7] Hazlett, "Cabling America: Economic Forces in a Political World," 218.

pre-comp

confirmed

A l

found th

markets

competit

company

versus 4

Sta

<u>Consumer</u>

measure

results

diverse

competi

month l

include

cost va

model.

Th
f
c
m

8

9
Get Be
1990,

1
Passed
cost v

pre-competitive levels."[8] The studies discussed below confirmed Hazlett's results.

A 1990 survey of 52 markets by Consumers' Research found that the rates for basic cable in non-competitive markets were 18 percent higher than in comparably-sized competitive markets. Further, in areas where only one cable company existed, fewer channels were provided, on average 33 versus 40, and the cost per channel was 33 percent higher.[9]

Stanford L. Levin and John B. Meisel used the Consumers'Research survey and a matched-sample design to measure the extent to which direct competition in cable results in lower prices, improved service quality or more diverse price-quality choices. They found that customers of competitive cable companies pay between $2.94 and $3.33 per month less for service, and that basic service typically includes more channels. Levin and Meisel also found that cost variables were not significant in any regression model.[10]

> This may suggest that costs are relatively unimportant factors in setting cable prices, within limits and that cable companies are charging what they can in the market, given customers' demands, and that relatively

---

[8] Ibid.

[9] John Merline, Dallas Davidson and Evans Pierre, "How to Get Better Cable TV at Lower Prices," Consumers' Research, May 1990, 10.

[10] In their models, Levin and Meisel used density (homes passed per mile of cable) and age (of the system in months) as cost variables.

The

cable

Cable

tele

scal

of s

to e

cont

con

mul

Rob

sys

re

ec

—

ar
Te

e
i

s
s

M
I

> small differences in cost will not affect the market price.[11]

The authors conclude that the most effective restraint on cable prices will come from competition.

Cable Television and Natural Monopoly Theory

The studies that apply natural monopoly theory to cable television delivery focus almost exclusively on economies of scale.[12] Little if any attention is paid to the concepts of sustainability or contestability.[13] Even with respect to economies of scale, the findings of researchers is contradictory. This may be a reflection of the contradictory character of natural monopoly theory itself.

In a theoretical comparative analysis of single versus multiple cable television systems, Rolland C. Johnson and Robert T. Blau concluded that allowing two or more cable systems in a given market to compete house-to-house would result in the unnecessary duplication of services and an economic waste of resources.[14] This is because "most cable

---

[11] Stanford L. Levin and John B. Meisel, "Cable Television and Competition Theory, Evidence and Policy," Telecommunications Policy, December 1991, 525.

[12] Although the term "economies of scale" refers to economies of size, density and scope, unless stated otherwise, it most often implies an economy of size.

[13] Although Noam and Owen and Greenhalgh discuss subadditivity briefly, the foci of their work are economies of scale.

[14] Rolland C. Johnson and Robert T. Blau, "Single vs. Multiple-System Cable Television," Journal of Broadcasting 18:3, (Summer 1974), 323-346.

televis

that se

wired t

wish to

demand

Ha

assert

econom

I
b
t
f
c
r
(
e
i
s

effor

monop

produ

homes

beyor

margi

range

advar

with

in Ca
Media

television franchises allow operators to construct a system that serves the entire community [and] once the community is wired the system is capable of servicing all persons who wish to subscribe." That is, one firm is able to meet the demand of the entire market.

Hazlett criticized Johnson and Blau's study and asserted that the economies to which they alluded were economies of density and not scale per se.

> If we assume [as Johnson and Blau did] that cable is a business experiencing overwhelming fixed cost and trivial variable cost, we must deduce that average cost falls as the number of customers rises against a fixed cost outlay. This indicates that average cost falls as more subscribers are added to the existing system (economies of density). It does not indicate that an existing system can grow to service new areas at a lower cost than that of a new entrant (economies of scale).[15]

Eli M. Noam used 1980 data from 4200 U.S. systems in an effort to answer the question of whether cable is a natural monopoly. In this study he considered cable a single product firm and used number of subscribers and number of homes passed as his measures of output. Noam found that beyond a small scale, average costs decrease with output and marginal costs are below average costs in the observed range. This implies that large cable operators have cost advantages over smaller ones, that these advantages increase with the disparity in size and, as a result, operate against

---

[15] Thomas W. Hazlett, "The Policy of Exclusive Franchising in Cable Television," Journal of Broadcasting and Electronic Media 31:1 (Winter 1987), 4.

ent

con

the

cri

fir

bas

sin

480

obs

sub

pro

eco

eco

to

for

tha

app

asp

fa

Te
in
No

A
Re
Yo

entry by another single product cable company.[16] Noam concludes "the existence of economies of scale throughout the relevant range of output meets Baumol's sufficiency criterion for a natural monopoly for the single product firm."[17]

However, because most cable operators provide both basic and premium services, they are multiproduct and not single product firms. Noam later expanded his study to all 4800 systems in operation in 1981. In the latter study, he observed economies of scale for two outputs--basic and pay subscriptions, and noted that because they are larger than product specific economies, they are more correctly economies of scope. To Noam, the presence of these economies suggests a natural monopoly structure. This seems to conflict with his finding of relatively small economies for the output measure, "homes passed" and his statement that "the implication . . . is that scale economies do not appear to exist primarily in the technical distribution aspects of cable television."[18] Further, the fact that fairly small returns to scale are observed for "homes

---

[16] Eli M. Noam, "Local Distribution Monopolies in Cable Television and Telephone Service: The Scope for Competition" in Telecommunications Regulation Today and Tomorrow, Eli M. Noam, ed., (New York: Law and Business, Inc., 1983), 358.

[17] Ibid.

[18] Eli M. Noam, "Economies of Scale in Cable Television: A Multiproduct Analysis," in Video Media Competition Regulation, Economics and Technology , Eli M. Noam, ed., (New York: Columbia University Press, 1985), 106.

pas

[de

pac

sub

to

mor

dis

Noa

con

eco

by

pro

com

198

con

only

eff

int

fin

comp

Cons
Poli

passed", "suggests that the cost advantages of size are [derived from] the larger operator's greater ability to package and sell his services more effectively to potential subscribers."[19] These cost advantages seem to be tied more to the market power of large operators than to the natural monopoly characteristics of cable television delivery. This distinction is critically important.

While similar in approach to the studies undertaken by Noam, Bruce M. Owen and Peter R. Greenhalgh drew different conclusions from their work on competition in cable. In an econometric analysis of the cost and demand conditions faced by individual systems, Owen and Greenhalgh used data from proposals submitted in municipal franchise bidding competition across the United States during the period 1979-1982.[20] They found that average costs were approximately constant over city size in the range examined, suggesting only modest economies of scale. While noting that "the effects of city or franchise-area size on costs are interesting,"[21] Owen and Greenhalgh also stated that this finding was "not especially relevant to the issue of competition among cable systems."[22]

---

[19] Ibid., 113.

[20] Bruce M. Owen and Peter R. Greenhalgh, "Competitive Considerations in Cable Television Franchising," Contemporary Policy Issues Volume IV, April 1986, 69-79.

[21] Ibid., 76.

[22] Ibid.

wo

in

th

do

pe

un

[t

th

ab

an

wi

wi

sca

eco

mon

the

cab

is

mul

may

---

were
inst
vari
subs

To see what effect direct competition within a city would have on costs, they used the mean value of all independent variables except subscribers.[23] They found that in head-to-head competition, between two cable systems down the same streets, with each system having a fifty percent market share, there is about a 14 percent penalty in unit costs per subscriber. They argued that "although this [the 14 percent penalty] is hardly negligible, it is within the range of monopoly markups that might be expected in the absence of competition or effective regulation."[24] Owen and Greenhalgh concluded that consumers might be better off with competition in spite of the cost penalties associated with the lost scale economies.

Noam and Owen and Greenhalgh found small economies of scale but differed in their conclusions as to whether those economies were enough to render the industry a natural monopoly. Part of the discrepancy between the findings of the researchers who have applied natural monopoly theory to cable television delivery is the discrepancy in how output is measured and whether cable is considered a single or multiproduct firm. Depending on the unit of measurement one may or may not find economies. For example, Johnson and

---

[23] The independent variables used by Owen and Greenhalgh were number of subscribers, number of channels, miles of institutional network, and miles of wire. The dependent variables were annual total cost and annual cost per subscriber.

[24] Ibid., 76.

Bl

co

in

su

ou

si

nu

al

of

me

c

e

a

a

t

c

w

c

l

l

s

s

c

w

Blau used number of subscribers and concluded that competition would be wasteful. Noam used several measures including homes passed and basic subscribers and pay subscribers. He found only small economies of size when output was measured in terms of homes passed with more significant economies of scope achieved when the measure was number of pay and basic subscribers. Owen and Greenhalgh also looked at several dimensions of output including number of subscribers, miles of wire and numbers of channels and measured the effect of that output on total costs and unit costs per subscriber. Although they found only modest economies of size, Owen and Greenhalgh did find that within a given city, the costs of producing a given level of output are minimized by single-firm production.[25] They concluded that neither was enough to rule out the possibility of competition.

The fact that output can be measured in more than one way is only one of the peculiarities of cable television. Cable is also peculiar in that if output is measured by homes passed or number of channels, then output is limited by technology and is inextricably tied to plant size.[26]

---

[25] Owen and Greenhalgh, op. cit., 78. When this occurs, subadditivity is said to exist.

[26] If output is measured in terms of number of subscribers, then the operator has more leeway in increasing output without being required to increase plant size but only within the range of homes passed.

Unl

out

exa

ope

he/

cos

cos

amy

no

th

ca

is

ex

f

s

b

a

s

a

Unlike other industries, the cable operator cannot increase output without at least retooling the physical plant. For example, in a typical coaxial cable system,[27] if the operator wishes to add to the number of active channels he/she must replace the amplifiers in the system. While the cost of replacement may be minimal, nevertheless there is a cost. Additionally there is a limit to the number of amplifiers that can be placed in succession before noticeable distortion occurs. Adding channels also requires that receivers and processing equipment be installed at the cable headend.[28] To increase the number of homes passed is even more costly. In addition to technical requirements, expanding a cable system may involve obtaining additional franchises or purchasing adjacent systems. This significantly limits the operator's ability to expand output beyond a certain point and achieve economies of scale.

A third peculiarity of cable is that economies of scale are overwhelmingly economies of density. As the number of subscribers per number of homes passed increases, the average cost of providing cable service decreases. This is

---

[27] Although fiber optic technology is increasingly employed in the trunk lines of cable systems, the majority of the plant, that is the feeder and drop lines, continues to be coaxial cable.

[28] The headend is the nerve center of a cable system. It is where all channels are received or originated, assembled and processed for transmission by the distribution network. Thomas F. Baldwin and D. Stevens McVoy, Cable Communication, second edition, (Englewood Cliffs: Prentice Hall, Inc., 1988), 9.

t
v
t
t
t
a
s
c
i
c
e
f
d
c
e
m
m

th
th
"t
a
is
th
Noa

true to varying degrees depending on the level of fixed and variable costs. When Johnson and Blau did their study in the early 1970s, it was fairly safe to assume that most of the cost of cable delivery was fixed. This has become less true with the emergence of costly basic cable networks such as ESPN, CNN, and TNT. While cable continues to have sizable fixed costs, variable costs can no longer be considered an afterthought. Currently variable costs include cost per channel per subscriber, the cost of converters and additional outlets frequently provided at no extra charge to the subscriber, and copyright and franchise fees. This is not to say that there are no economies of density in cable delivery; they remain. But, as variable costs continue to rise in relationship to fixed costs, those economies become less significant. This makes it all the more difficult to convincingly argue that cable is a natural monopoly.

Where cable operators do achieve efficiencies is through economies of scope and market power. As noted in the previous chapter, economies of scope can be defined as "the simultaneous production of several different outputs in a single enterprise, as contrasted with their production in isolation, each by its own specialized firm."[29] In cable, those outputs are basic and pay channels or subscribers. Noam found significant economies of scope in his latter

---

[29] See p. 11.

study.

from t

sell h

operat

W

televi

render

increa

should

with r

cable

study. He also found that the cost advantages of size stem from the larger operator's greater ability to package and sell his/her services more effectively than a smaller operator.

While there may be some efficiencies in cable television delivery, these efficiencies are not enough to render the industry a natural monopoly. The courts have increasingly found that cable is not a natural monopoly and should be open to competition. The evolution of case law with respect to the natural monopoly characteristics of cable television is the subject of the next chapter.

t
m
(
t
O
b
o
t
t

65

CHAPTER IV
CASE LAW

The courts, like scholars, have not been unanimous in their determinations of whether cable is in fact a natural monopoly. In Greater Fremont, Inc. v. City of Fremont (Fremont), two cable operators challenged the validity of the municipal franchise ordinances in Fremont and Sandusky, Ohio.[1] While the case did not deal with competition between operators in a single geographic location, it was one of the first to address the question of whether cable television delivery is a natural monopoly. The court found that it was not. In fact, Fremont asserted that cable is

> capable of carrying as many messages as pairs of wire in the cable can be created. [And] a cable with 12 wires can carry 132 messages at the same time. . . . While practical considerations may limit the number of operators, nonetheless, 132 CATV systems each entirely

[1] Greater Fremont Inc. v. City of Fremont 302 F. Supp. 652 [1968].

> independent of all the others could in theory be carried in a cable the size of one's thumb.[2]

In Community Communications Co. v. City of Boulder (Boulder), an incumbent operator brought an antitrust suit against the city.[3] The city attempted to restrict the operator from expanding its system for a period of three months as the city examined proposals from potential competitors. While the central issue in the case was whether the city was exempt from antitrust laws, Judge Markey in his dissent considered the natural monopoly question.

> On appeal, the city's sole defense is to pretend, disingenuously and contrary to the extensive, uncontradicted testimony and the specific findings of the trial judge and contrary to its own City Attorney's advice that cable is a "natural monopoly".
> Not to put too fine a point on it, that argument is today simply fallacious. As the trial judge found and as the record makes clear, modern technology makes free and open competition both practical and economically

---

[2] Ibid., 657, Note 5. The court arrived at the number 132 from the formula: number of pairs = n x (n-1), and used 12 pairs as an example.

A distinguishing characteristic of Fremont is the fact that neither operator intended to erect his/her own transmission system. Each proposed using the facilities of the Ohio Bell Telegraph Company. In many cases where the courts examine the question of whether cable is a natural monopoly, the defendant, usually a city, argues that franchising more than one operator will result in undue disruption of public rights of way.

[3] Community Communications Co. v. City of Boulder 630 F. 2d 704 [1980] (U.S. Court of Appeals 10th Circuit).

City

preser

existe

been e

Indiar

T
c
i
C
a
a
h
t
c
a
p
I

694 F.
I
court'
the ci
Omega
contend
defacto
Th
prelimi
establi
Sherman
granted
enter t
action
Ib.

> available to the city by at least four competing cable communicators.[4]

Writing for the court in <u>Omega Satellite Products v. City of Indianapolis</u> (<u>Omega</u>), Judge Posner relies on the presence of economies of scale as a requirement for the existence of a natural monopoly but notes that it has not been established that those conditions are present in Indianapolis.[5]

> The cost of the cable grid appears to be the biggest cost of a cable television system and to be largely invariant to the number of subscribers the system has. Once the grid is in place . . . the cost of adding another subscriber is probably small. If so, the average cost of cable television would be minimized by having a single company in any geographic area; for if there is more than one company and therefore, more than one grid, the cost of each grid will be spread over a smaller number of subscribers and the average cost per subscriber and hence price will be higher.
> If the foregoing accurately describe conditions in

---

[4] Ibid., 712.

[5] <u>Omega Satellite Products Co. v. City of Indianapolis</u> 694 F. 2d 119 [1982].

In this case, Omega was seeking a reversal of a lower court's denial of a preliminary injunction which would forbid the city from removing Omega's cable from a drainage culvert. Omega brought action against the City of Indianapolis contending that the city violated the Sherman Act by granting defacto exclusive cable franchises.

The Court of Appeals found that the denial of the preliminary injunction was proper because Omega "did not establish sufficient probability that it would prevail on its Sherman Act claim and that even if the injunction were granted, Omega was not likely to make a serious effort to enter the cable television business until the merits of its action were determined after trial."

Ibid., 120.

(E

op

se

co

"e

ju

le

no

Su

of
of
Be

> Indianapolis--...a question on which the record ... is sketchy at best--it describes what economists call a "natural monopoly," wherein the benefits and indeed the possibility of competition are limited. ... [However, in trial] Omega may be able to prove that cable television in Indianapolis is not a natural monopoly.[6]

In Berkshire Cablevision of Rhode Island v. Burke (Berkshire), cable operators challenged the requirement that operators construct an institutional/industrial network and set aside channels for public access.[7] In its decision the court accepted the natural monopoly argument and used the "economic scarcity" rationale as outlined in Red Lion [8] to justify its finding that the contested requirements were legal. The Berkshire court found that the requirements did not constitute a taking of property and even if they did,

> cable operators have been given just compensation. Cable operators are given the right to use the streets and other public places to construct their cable distribution systems. . . Cable operators are also given a "natural monopoly" over cable television within their service areas.(citations omitted, emphasis added.)[9]

---

[6] Ibid., 126 and 127.

[7] Berkshire Cablevision of Rhode Island v. Burke 571 F. Supp. 976 [1983], 989.

[8] Red Lion Broadcasting Co. v. FCC 395 U.S. 367 [1969] In Red Lion, the Supreme Court "relied upon the scarcity of broadcast frequencies when it upheld the constitutionality of FCC regulations (sic) known as the fairness doctrine." Berkshire, 981.

[9] Berkshire, 989.

What is troubling about Berkshire is the court's confusion of a natural monopoly with a legal one. While it is true that an operator may be given a monopoly, in the case of cable television franchising, the monopoly is a legal one, not necessarily a natural one. The Berkshire court's reasoning is also flawed in its assumption that because operators rarely develop competing cable systems within the same service area, a "natural monopoly" results. The court also refers to

> the economic realities of the cable industry, which as a practical matter, create a "natural monopoly" for the first cable operator to construct a cable system in a given service area.[10]

Although there may be advantages that accrue to the first operator, these advantages come from being first in the market and should be considered separately from those factors that determine whether a market is in fact a natural monopoly.

Central Telecommunications, Inc. v. TCI Cablevision, Inc. (Central Telecommunications) is part of a growing body of law that questions whether cable television delivery is a natural monopoly.[11]

> Although the law in this area [right of a local governmental body to place a limit on the number of

---

[10] Ibid., 986.

[11] Central Telecommunications, Inc. v. TCI Cablevision, Inc. 610 F. Supp. 891 [1985], (D.C. Mo.).

What

wheth

by ma

natu

<u>Comm</u>

TCI a

why t

telev

it di

Force

Homes

rulin

[1985

servi
From
the b
Cable
subse
compe

1

> franchises in its jurisdiction] is far from settled, the emerging answer appears to be that the grant of a single cable franchise is permissible only if the physical and economic conditions of the relevant market give rise to a "natural monopoly" situation.[12]

What Central Telecommunications suggests is that determining whether cable is a natural monopoly must be done on a market by market basis.

An especially interesting case with respect to the natural monopoly status of cable television is Tele-Communications of Key West (TCI) v. U.S. [13] In this case, TCI alleged that "there are no legal or practical reasons why two companies cannot compete directly to provide cable television service."[14] TCI undoubtedly took the position it did here because the company had been ordered by the Air Force to remove its cables and other equipment from Homestead Air Force Base. In reversing the lower court's ruling and finding in favor of TCI, the Circuit Court twice

---

[12] Ibid., 899 and 900.

[13] Tele-Communications of Key West v. U.S. 757 F. 2d 1330 [1985].
This case involved the provision of cable television service to Homestead Air Force Base in Dade County, Florida. From 1974 through 1983 TCI had an exclusive contract to serve the base. In June, 1983, the Air Force requested bids for cable television service from a variety of parties and subsequently granted an exclusive contract to a TCI competitor.

[14] Ibid., 1335.

e

c

c

y

a

s

c

c

l

c

g

t

e

c

a

/

Ca

echoed TCI's allegation that competition between two operators was possible, at least in this particular case.

Perhaps the most important case with respect to direct competition in cable television is Preferred Communications v. City of Los Angeles, California (Preferred).[15] While argued principally on first amendment grounds, Preferred has significant natural monopoly implications. Prior to this case, cities and franchising authorities frequently used cable's disruption of the public domain as justification for limiting the number of franchises granted. The Preferred court found, that although the disruption may legitimately give rise to a need for licensing, it is inconsistent with the First Amendment for

> a city to limit access to single cable television company . . . when the public utility facilities and other public property necessary to the installation and operation of a cable television system are capable of accommodating more than one system.[16]

Although the court chose to avoid deciding whether economic scarcity justifies government regulation in the case of cable television, it did accept the plaintiff's assertion that "competition is economically feasible in the

---

[15] Preferred Communications, Inc. v. City of Los Angeles, Cal. op. cit.

[16] Ibid., 1402.

I

e

C

o

P

A

a

b

w

a

w

Ce

co

nc

F.

95

(D.

Los Angeles area" and assumed "that no natural monopoly exists."[17]

In both Century Federal, Inc. v. City of Palo Alto, Cal. (Century Federal)[18] and Group W. Cable, Inc. v. City of Santa Cruz (Group W)[19], the Courts took their cues from Preferred in rendering their decisions primarily on First Amendment grounds. Although the Century Federal court asserted that it confronted the natural monopoly issue because "the parties have hotly contested the question of whether the cable television market in the proposed service areas is a natural monopoly"[20] it didn't really establish whether such a monopoly existed. Instead, the Court in Century Federal chose the course taken by the D.C. Circuit court in Quincy [21]. That court found that because there is no "meaningful distinction between cable television and

---

[17] Ibid., 1404.

[18] Century Federal, Inc. v. City of Palo Alto, Cal. 648 F. Supp. 1465 [1986] (N.D. Cal.).

[19] Group W Cable, Inc. v. City of Santa Cruz 669 F. Supp. 954 [1987] (N.D. Cal.).

[20] Century Federal, 1472.

[21] Quincy Cable TV, Inc. v. FCC 768 F. 2d 1434 [1985] (D.C. Cir.).

newspapers" the natural monopoly rationale for regulation of cable television is irrelevant.[22]

The Court in Group W, relied heavily on Preferred in justifying its determination that a finite utility infrastructure is not a sufficient reason for limiting to one the number of cable companies allowed to operate in a city. But, the Group W court went a step further and concluded that

> even if Santa Cruz's factual allegations concerning its cable market are taken as true, [and the market for cable television in its community can only support one cable franchise], the natural monopoly rationale cannot as a matter of law justify Santa Cruz's paternalistic regulatory scheme.[23]

Finally, in Pacific West Cable Company v. City of Sacramento, Cal. (Pacific West),[24] a jury found that "cable television in Sacramento is not a natural monopoly and that head-to-head competition is likely to occur and endure in the Sacramento market."[25] The Court ordered the defendants to issue to the plaintiff a "license or licenses . . . for the construction and operation of a cable television system

---

[22] Ibid., 1472 and 1473.
The principal outcome of Quincy was the striking down of the "must carry" rules. These rules required that cable operators carry all local broadcast channels.

[23] Group W, 964.

[24] Pacific West Cable Company v. City of Sacramento, Cal. 672 F. Supp. 1322 [1987] (E.D. Cal.).

[25] Ibid., 1328.

or s

199(

port

impo

in t

cabl

was

majo

diss

was

dete

depe

scal

exis

accep

or systems within the defendants' jurisdictions ."[26] As of 1990, Pacific West Cable was providing cable service in portions of Sacramento in competition with Scripps Howard.

In its judgment, the Pacific West court noted the importance of the jury's finding

> If competition is feasible and sustainable, then the impact of selecting a single cable television service provider and then excluding all others has an extremely significant effect on expression . . . the interests identified by the jury are not sufficiently substantial to justify a government-endorsed monopoly over a particular medium of communication, nor is such a monopoly "essential" to the furtherance of these interests."[27]

To summarize, the courts have been far from unanimous in their decisions regarding the natural monopoly status of cable television. In Fremont the court concluded that cable was not a natural monopoly. In Boulder, although the majority found in favor of the city, Judge Markey in his dissent concluded that cable television in Boulder, Colorado was not a natural monopoly. In Omega Judge Posner said that determining whether an industry is a natural monopoly is dependent on establishing the presence of economies of scale. And, he was uncertain about whether those conditions existed in Indianapolis. In Berkshire while the court accepted the argument that cable was a natural monopoly,

---

[26] Ibid., 1340.

[27] Ibid., 1335.

w
e
t
b

r
p
p
f
m
a
th
f
r

an
co
co
a
tha
fra

that court confused a natural monopoly with a legal one. This suggests that the concept of what constitutes a natural monopoly is not clearly understood.

The court in Central Telecommunications stated that while the law regarding the right of municipalities to grant exclusive franchises was far from unsettled, it appeared that the only circumstance under which such policies would be permitted would be in cases of natural monopoly.

As noted above, perhaps the most important case with respect to direct competition in cable television is Preferred. In this case, the court accepted the plaintiff's assertion that competition is economically feasible in the Los Angeles are and assumed no natural monopoly existed. Further, the Preferred court found that as long as its infrastructure can physically support more than one cable system, a city cannot issue an exclusive franchise. To do so would violate the First Amendment rights of would-be entrants.

Since Preferred in cases like Century Federal, Group W and Pacific West the courts have been quite consistent in concluding that it is only under the most stringent of conditions that a municipality can constitutionally justify a policy of exclusive franchising. By explicitly stating that "a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additi

codifi

more c

numbe

I

impac

televi

follo

28

additional competitive franchise",[28] the Cable Act of 1992 codifies the decisions of the courts and makes it all the more difficult for cities to justify limiting to one the number of cable operators providing service in a community.

Nonetheless, franchise policy will continue to have an impact on the viability of direct competition in cable television service. The reasons why are detailed in the following chapter.

---

[28] Cable Act of 1992, Section 623.

op

an

of

Ac

fr

me

fr

Mo

fr

ma

ne

ma

the

cab

the
ren
gra

Mon
Mon

CHAPTER V
FRANCHISE POLICY

The 1984 Cable Act requires that a prospective cable operator obtain a valid franchise before beginning operation and details the steps to be followed to secure the renewal of that franchise.[1] Prior to the passage of the 1984 Cable Act, there was no set of federal procedures regarding franchises. Rather, each municipality developed its own method of determining which company would be given the franchise. Jack Gilbert, General Manager of Storer Cable in Montgomery, Alabama has stated that the reason that franchising policy was allowed to develop in the ad hoc manner that it did was because cable was not viewed as a necessity the way that other utilities were and so was not mandated at the federal or state level.[2]

Daniel L. Brenner and Monroe E. Price have stated that the franchising process has in large measure shaped the cable television industry and that while there may be

---

[1] While the 1992 Cable Act has a provision requiring the Federal Communications Commission to reform franchise renewal rules, it leaves the rules pertaining to the granting of original franchises intact.

[2] Jack Gilbert, General Manager, Storer Cable, Montgomery, Alabama, interview by author, tape recording, Montgomery, Alabama. February 24, 1993.

competition _for_ the market, "this competition is aimed at obtaining the franchise from the local authority, rather than by direct competition for the hearts and minds of the ultimate subscriber.[3] They imply that this is a poor substitute for competition _within_ the market. This is the conclusion reached by many scholars who have examined cable television franchising.

In his groundbreaking 1968 article, Harold Demsetz discussed what he considered the deficiencies of natural monopoly theory and argued that although a market may be a natural monopoly, the number of bidders for the market can be quite large. By allowing these bidders to compete for a franchise, the market is forced to behave in a manner that is similar to the behavior one would expect under competition. To Demsetz and others, this process provides an attractive alternative to rate regulation as a means of controlling the natural monopolist's behavior. Under Demsetz's model, the only role that the government or a consumers' buying cooperative would play is to use some random device to select the winning bidder in the case of a tie.[4]

---

[3] Daniel L. Brenner and Monroe E. Price, _Cable Television and Other Nonbroadcast Video,_ (New York: Clark Boardman Company, Ltd., 1986,) 3.01, 3-3.

[4] Demsetz, op. cit.

bet

unc

Den

ine

nat

sta

pro

stu

197

As

the

tra

appe

nece

deta

While conceding that this may involve negotiation between organized buyers and sellers as well as a somewhat uncertain outcome with respect to wealth distribution, Demsetz asserted that "there is no reason to expect inefficiency."[5]

Although Williamson believes that franchise bidding for natural monopolies may have attractive properties, he also states that, in reality, it encounters many of the same problems that are associated with regulation. From a case study of cable television in Oakland, California done in the 1970s, Williamson concluded that

> good intentions to the contrary notwithstanding, unassisted franchise bidding . . . conducted and executed under conditions of uncertainty has dubious properties. The franchise authority that assumes an accommodating posture is merely legitimating monopoly while a concerted effort to exercise control requires the agency to a adopt a regulatory posture.[6]

As he views it, the key problem with franchise bidding is the fact that the process is "beset with numerous transactional difficulties" and is much more complex than it appears at first glance. Unconvinced that this process is necessarily better than regulation, Williamson argues for a detailed examination of additional alternatives.

A few years earlier, Posner applied Demsetz's model to

---

[5] Ibid., 58.

[6] Williamson, op. cit., 101.

cable

that t

proces

solic

T
f
l
c
l
c
p
r

l

as the

franch

Those

one ar

paymen

Posner

franch

charac

seek a

franch

monopo

7
in the
and Mar

8

cable television but took it one step further and suggested that the ultimate consumer play a role in the franchising process. Under Posner's model, bidders would be allowed to solicit the area's residents for a period of time.

> The applicant would seek to obtain actual commitments from potential subscribers. The franchise would then be awarded to the applicant whose guaranteed receipts on the basis of subscriber commitments were the largest. The applicant would also be required to contract in advance that in the event he won, he would provide the level of service and at the rate represented in his solicitation drive.[7]

Posner offered the model he did because of what he saw as the dangers associated with the long-term exclusive franchising of cable television operators by municipalities. Those dangers include adding a legal monopoly to a natural one and the ability of the franchising authority to extract payments from the franchisee at considerable social costs. Posner attributed the fact that municipalities grant cable franchises on an exclusive basis not to any inherent characteristics of cable television, but ". . . because they seek a share of the monopoly profits in the form of franchise fees".[8] The idea that cities share in the monopoly profits of their cable operators and that this

---

[7] Richard A. Posner, "The appropriate scope of regulation in the cable television industry," Bell Journal of Economics and Management Science 3:1, Spring 1972, 115.

[8] Ibid., 113.

represe

number

In

of Phil

charact

is know

To Webb

Th
of
wo
ar
th
th
po

The cit

first

result

uncabl

cable

p
a

9
practi
locall
for th
when t
his st
have g
to pur
exchan
facili

10
(Lexing

represents a misallocation of resources is a concern of a number of researchers.

In a case study of the franchising process in the City of Philadelphia, Webb discovered that the process was characterized by political infighting and typified by what is known as "rent-a-citizen" and "rent-an-institution".[9] To Webb,

> The dynamic that united both the grantors and grantees of municipal cable franchises was that the process would pay dividends to both sides. In the pro forma arrangement, a city would auction off the franchise to the cable firm bidding not the highest dollar amount to the municipal treasury, but the most compelling set of political payments, favors or subsidies.[10]

The city went through four competitive bidding stages; the first in 1966, the fourth in 1982. When Webb published the results of his study in 1983, most of Philadelphia remained uncabled. He concluded that while competitive bidding for a cable franchise results in the

> proposal of prices that can be expected to produce approximately normal returns for the firm. . .

---

[9] The term "rent-a-citizen" is used to refer to the practice of a cable applicant giving an individual with locally important political ties stock in the firm in exchange for their support. The term "rent-an-institution" is used when the arrangement is done on an institutional basis. In his study, Webb gave the example of a joint venture that would have given the University of Pennsylvania a low-interest loan to purchase a 20 percent share in the proposed cable system in exchange for the use of the university's name and some office facilities.

[10] G. Kent Webb, The Economics of Cable Television, (Lexington: Lexington Books, 1983), 180.

mc
ex
re
or

In

franchi

Nadel n

resourc

evaluat

these s

Th

by Webl

conces

biddin

Zupan

additi

[
t
d
t
i
p
f
t
p

11

12
Franchi
1983, 5

13
Schemes
Evidenc

> monopoly power has not been eliminated, it is instead exercised directly by the municipality which may require extensive investment in public facilities as one of the terms of the franchise contract.[11]

In discussing the difficulties associated with the franchising procedure as it is conducted in most places, Nadel noted that the process forces applicants to allocate resources to public service offerings "without any evaluation of whether the benefits derived from offering these services justify the costs."[12]

The public service offerings and facilities mentioned by Webb and Nadel represent what are known as nonprice concessions and are one of the factors that make franchise bidding an imperfect solution to a natural monopoly problem. Zupan used Demsetz as a starting point and outlined additional factors which make franchise bidding problematic.

> [In Demsetz's model,] ex ante competition is relied on to ensure that, ex post, the winner of the competition does not behave monopolistically. But in reality, there may be imperfect competition at the time of initial bidding, producer "capture" of the regulatory process, . . . and difficulties in enforcing a franchise contract once it is struck --especially if the incumbent firm has distinct advantages over potential rivals and is prone to opportunism.[13]

---

[11] Ibid., 179.

[12] Mark S. Nadel, "COMCAR: A Marketplace Cable Television Franchise Structure," Harvard Journal on Legislation 20: 541, 1983, 547.

[13] Mark A. Zupan, "The Efficacy of Franchise Bidding Schemes in the Case of Cable Television: Some Systematic Evidence," The Journal of Law and Economics 32: October 1989,

Although

surface

most si

franchi

free ho

network

as a pe

would a

the co

signif

the ex

often

Hazlet

the e

schem

fact

onst

con

11

401

An

Although all of the conditions detailed by Zupan frequently surface in the cable television franchising process, the most significant may be the nonprice concessions that franchisors require. These may include direct endowments, free hook-ups for public institutions, institutional networks, excess channel capacity, and franchise fees levied as a percentage of operating revenues. To this Hazlett would add the costs of delays in awarding the franchise and the costs of political lobbying. These concessions are significant because it is believed that they are achieved at the expense of lower prices for general services and are often of little value to the ultimate consumer. Zupan and Hazlett would argue that this represents a curtailment of the efficiency enhancing potential of franchise bidding schemes.[14]

To test the hypothesis that nonprice concessions are in fact costly, Zupan surveyed managers of cable systems coming onstream during the early 1980s. He found that "nonprice concessions accounted for 26 percent of building costs and 11 percent of operating expenses."[15] And,

---

401 and 402.

[14] Zupan, 404.
Hazlett, "Private Monopoly and the Public Interest: An Economic Analysis of the Cable Television Franchise," 1409.

[15] Zupan, op. cit., 417.

firm

fran

reve

have

was

its

powe

foun

use

basi

pref

cont

An Ec

> of the expenditures related to nonprice concessions, a sizeable portion appeared to provide only limited economic benefits. Institutional networks, for example, accounted for 14 percent of construction costs but generally lie idle.[16]

Zupan's results are similar to those of the accounting firm, Ernst and Whinney. It found that for a typical franchise, approximately 22 percent of total subscriber revenues were used to cover costs which the system would not have incurred without the franchise requirements.[17]

Despite its flaws, both Zupan and Webb found that there was some merit to the franchising bidding process. That is, its ability to prevent monopoly pricing and transfer market power from private firms to municipalities. Even so, Webb found it ironic that

> although much of the public concern regarding the abuse of monopoly market power has been directed at the private firm, it is often the municipalities charged with regulating the industry that have wielded the market power.[18]

Phillip A. Beutel questioned whether cities do in fact use their market power to select a cable operator on the basis of factors that would be inconsistent with the preferences of the average consumer. Using data from contract bids for 27 randomly selected municipal auctions

---

[16] Ibid.

[17] Hazlett, "Private Monopoly and the Public Interest: An Economic Analysis of the Cable Television Franchise," 1363.

[18] Webb, op. cit., 180.

that took place across the United States between 1979 and 1981, Beutel found that cities selected firms with local or regional advantages and preferred relatively fewer unprofitable services and relatively higher basic tier prices. Beutel cited the cities' desire to transfer rents in kind to special interest groups or in cash as a source of revenue to bolster municipal tax coffers as a possible reason for selecting firms with the higher basic prices. The finding that cities choose firms with relatively fewer unprofitable services seems to conflict with the findings of Zupan and Webb. But, Beutel reasons that this "merely reveals bidding firms' overestimation of the impact of special interests over local authorities"[19] Alternately, Beutel suggests that cities recognize that nonprice concessions are costly and reduce a firm's profits, thereby reducing the cities' revenue. Overall he concludes, "the results suggest that monopoly franchising may serve private interests at the average consumer's expense."[20] This appears to verify the conclusions drawn by Webb, Zupan and Hazlett.

---

[19] Phillip A. Beutel, "City objectives in monopoly franchising: the case of cable television," Applied Economics 22: 1990, 1245.

In his study, Beutel used the same data as Owen and Greenhalgh did in their study of competitive issues in cable television franchising.

[20] Ibid., 1237.

Wh

it

ar

al

pe

be

pr

co

Th

le

19

fra

Tel
Rec

In their studies Zupan and Webb used pre-1986 data. While the Cable Act of 1984 effectively deregulated rates, it permits a franchise authority to continue to require that an operator provide nonprice concessions. The Act also allows the authority to charge an operator up to five percent of gross revenues as a franchise fee. In part because cities are no longer able to prevent monopoly pricing but continue to require costly nonprice concessions, consumers have been saddled with increasingly higher rates. This suggests that the franchising bidding process may be less meritorious than it was prior to the passage of the 1984 Act.

Hazlett has written,

> franchising without rate controls essentially involves just the transfer of rents. This actually promotes inefficiency because these redistributions are not enacted via direct money payments to individual decisionmakers, but are paid through public organizations via the political process. The deregulated franchise monopoly then promotes wasteful rent seeking, substitutes political selection for consumer selection of the monopolist or duopolist and freezes out new forms of technology and innovative organizations or delivery modes, while failing to offer even a plausible chance of welfare gains through price controls or rate-of-return regulation.[21]

To Zupan, Webb and Hazlett, the key drawback to the franchise bidding process is that it results in the

---

[21] Thomas W. Hazlett, "Duopolistic Competition in Cable Television: Implications for Public Policy," Yale Journal on Regulation 7:65 1990, 85 and 86.

inefficient transferral of economic rents from monopolists to municipalities rather than to consumers. And, to Webb, one severe limitation to the bidding process, is the fact that once the franchise has been awarded and a cable operator is established as an incumbent, direct competition is all but removed from the market.

One solution to the problem of franchise bidding in cable would be to adopt a policy of open entry. Hazlett is one of the chief proponents of this type of policy. He sees the fact that it would offer maximum consumer surplus, while leaving zero surplus for politicians to extract, as its key justification.[22] To support his proposal, Hazlett refers to a NTIA study which concluded that

> the common occurrence of exclusive cable franchises does not serve the public interest. The franchising process has seriously impeded entry by competitors and imposes substantial costs on franchisees, cable subscribers and the public.[23]

As might be expected, a policy of open entry has its critics. Because control of entry is one of the key ways that franchising authorities use to transfer wealth, the majority of municipalities continue to grant exclusive

---

[22] Thomas W. Hazlett, "Private Contracting versus Public Regulation as a Solution to the Natural Monopoly Problem," in Unnatural Monopolies, Robert W. Poole, Jr., ed., (Lexington: Lexington Books, 1985), 84.

[23] Thomas W. Hazlett, "Should Telephone Companies Provide Cable TV?" Regulation Winter 1990, 73.

fr

Ac

Le

th

al

ar

lo

co

fr

di

"t

ca

th

—

Po

Te
7:1

franchises. This may certainly change under the 1992 Cable Act but, as late as 1989, Hazlett wrote that the National League of Cities "has vigorously fought open-entry claims in the courts and has consistently advised its members against allowing competition in cable."[24]. Consumers' Research has argued that one of the reasons for this is cities' fear of lost revenue if there is more than one operator. And while conceding that the transferral of rents that occur under franchise bidding schemes may not be desirable from a distribution perspective, Albert K. Smiley argues that "they should not be counted as welfare losses since they are captured by the recipients."[25] And,

> even if monopolists do transfer rents to public officials, it is unclear what portion of the monopolist's incremental profits is dissipated in inefficient rent-seeking activities and what portion is transferred to franchise authorities and special interest groups.[26]

Smiley identifies cream skimming and the possibility that in some markets, a welfare maximizing natural monopoly

---

[24] Hazlett, "Cabling America: Economic Forces in a Political World," 220.

[25] Albert K. Smiley, "Regulation and Competition in Cable Television," response to Hazlett in Yale Journal on Regulation 7:121 1990, 127.

[26] Ibid.

a

o

o

r

m

"

—

pr
se

Te

Te

may be unsustainable without regulations prohibiting entry as a potential problem of an open entry policy.[27]

> If selective entry (cream skimming) persists, the natural monopolist will eventually exit or not enter at all and the loss of consumer surplus in the low-density neighborhoods may exceed the gains in the high density neighborhoods. If open entry results in a net reduction in total welfare and consumer surplus, a strong case can be made for franchise protection.[28]

But, to Hazlett

> the notion that [without a monopoly franchise] service will be denied some areas is testimony that either the cost of providing the service is greater than it is valued by the consumers, or that customers must be charged identical prices. The fact that municipal cable franchises routinely stipulate fixed community-wide prices as well as universal service . . . is clearly economically inefficient.[29]

Hazlett argues further that consumer surplus must rise as entry takes place because of reduced prices and expanded output to consumers. To Hazlett, the primary advantage of open market selection is that it spontaneously distributes rewards in the form of profits to those entrepreneurs who most efficiently meet consumers' preferences for diversity. "The political selection of product or service . . . cannot

---

[27] The term cream skimming is used to refer to the practice of selectively entering only the more lucrative segments of a market.

[28] Smiley, "Regulation and Competition in Cable Television," 130.

[29] Hazlett, "The Policy of Exclusive Franchising in Cable Television," 14.

match the vastly more efficient selection that takes place in the open marketplace."[30]

Since the primary purpose of a cable television franchise is to give operators legal access to public rights-of-way, it would seem that there should be a middle ground between the two extremes of exclusive franchises and completely unrestricted entry. That middle ground would be a policy of nonexclusive franchises whereby competition between operators would be encouraged while cities would maintain some control over the public domain. Successful court challenges such as Preferred to exclusive franchise policies, the inclusion of a provision that "(1) prohibits franchise authorities from unreasonably refusing to award additional franchises" in the final version of The Cable Television Consumer Protection and Competition Act of 1992 [31] and a finding by the National Association of Telecommunication Officers and Advisors (NATOA), an arm of the National League of Cities, that 90 percent of

---

[30] Hazlett, "Private Monopoly and the Public Interest: An Economic Analysis of the Cable Television Franchise," 1383.

[31] Congress, Senate, committee on Commerce, Science and Transportation, Cable Television Consumer Protection Act of 1991, report of the Senate Committee on Commerce, Science and Transportation, Together with Minority Views on S. 12, 101st Cong., 2d sess., 1991, GPO 1991, 14.

The provision cited in the text above was included in the final version of the Act as passed by both houses of Congress in October, 1992.

municipalities responding do not bar competition between cable operators[32] provide evidence that support for this type of policy is gaining momentum.

But, even the most strident supporters of direct, head-to-head competition between cable operators state that the extent to which this type of competition is feasible is determined in large measure by a combination of market factors and political conditions. And, that competition is probably not feasible in all markets.[33] One of the factors that impact competition is the strategic interaction between firms. This behavior is the subject of the following chapter.

---

[32] Thomas Cohan and William F. Squadron, "NATOA Survey Finds Soaring Cable Rates," Nation's Cities' Weekly, April 29, 1991, 1.

The survey cited was completed by 184 local cable regulators who are responsible for 1,002 franchises. This represents about ten percent of all systems in the United States. Since there was no mention of how the sample was chosen or what the overall response rate was, the results of the survey may be biased towards cities with more liberal entry policies and may not reflect the policies of most municipalities.

[33] Rush Rice, President of Montgomery, Alabama CableVision, interview by author, Lansing, Michigan, August 31, 1992.

Cushing interview.

Both companies operate cable systems which compete with an established operator.

ar

ca

R

ca

ar

s.

sy

w

t

b

i

a

P

t

f

p

M

19

CHAPTER VI
STRATEGIC BEHAVIOR

In cases where two cable operators compete with one another, the market can be described as a duopoly, a special case of oligopoly. Robert S. Pindyck and Daniel L. Rubinfeld have stated, "in oligopolies, each firm must carefully consider how its actions will affect its rivals and how its rivals are likely to react."[1] In his simulation of direct competition between cable television systems, Smiley found that the degree of overbuilding as well as the resulting welfare effects are highly sensitive to market factors including the strategic interaction between firms. In oligopolistic situations, that strategic interaction involves competition through price setting and/or product differentiation.

Price Setting

The Betrand model describes the type of competition that occurs in cable television. This model assumes that firms produce a homogenous good but compete by setting prices, with each firm taking the prices of its competitors

[1] Robert S. Pindyck and Daniel L. Rubinfeld, Microeconomics, (New York: Macmillan Publishing Company, 1989), 427.

as

the

und

dow

tel

tha

equ

def

pri

typ

it

occ

and

can

rec

For

any

Pin

tha

Tel

as fixed and the firm with the lowest price capturing all the sales. In this case, each firm has an incentive to undercut the price of its competitor until price is driven down to marginal cost.[2]

Smiley noted that when considering entry into a cable television market, a potential entrant should anticipate that the incumbent's price will be reduced in the post-entry equilibrium to meet the competitive challenge.[3] Sharkey defines this type of strategy as one which "explicitly uses price as a threat against potential rivals."[4] With this type of strategy, the incumbent firm "clearly indicates that it is willing to lower its price temporarily if entry should occur and thereby inflict short-run losses on both itself and on the entrant. After the rival has left, the incumbent can then raise its price to the monopoly level and therefore recover its short-run losses."[5]

The key purpose of this strategy is to deter entry. For it to be successful, the incumbent firm must convince any potential competitor that entry will be unprofitable. Pindyck and Rubinfeld state that there are a number of ways that an incumbent can do this. For instance, it can

---

[2] Pindyck and Rubinfeld, 433, note 3.

[3] Smiley, "Regulation and Competition in Cable Television," 132.

[4] Sharkey, op. cit., 146.

[5] Ibid.

t

e

m

i

t

i

a

i

h

i

b

m

r

m

e

s

ma

re

te

or

Im

threaten to expand output and fight a price war to keep the entrant out. To make the threat credible, the incumbent can make an irrevocable commitment that would alter its incentives once entry has occurred. Investing now rather than later in the extra capacity needed to increase output is an example of this type of commitment. The incumbent can also make its threat credible if it has a reputation for irrationality. If through vicious price-cutting, the firm has driven out every competitor in the past, even though it incurred losses to do so, its threat of a price war would be believable. In fact, if this were repeated in several markets, then that irrationality would become rational. The reason is that short-term losses from the price warfare might be outweighed by longer-term gains from preventing entry.[6]

Hazlett found evidence of price cutting in his case studies of direct competition in cable in several Florida markets and in Sacramento, California. "In Florida, the response of the overbuilt incumbent to entry by Telesat was to reduce the prices of both pay and basic services although only in overbuilt areas."[7]

> In Sacramento, the entrant, Cable America hoped to gain market penetration by offering 36 to 42 channels of basic service for a $10 installation fee and $10 per month. This significantly undercut the incumbent,

---

[6] Pindyck and Rubinfeld, op. cit., 478 and 479.

[7] Hazlett, "Duopolistic Competition in Cable Television: Implications for Public Policy," 101.

pr

nc

ca

wa

be

of

co

pr

in

re

to

Th

> Scripps-Howard's 40 channel basic service which was offered for $14.50 per month. In response, Scripps-Howard sought to establish a general policy: it would lower its price for basic service while offering free installation and three months of basic service at no charge in every area where it faced direct competition. Moreover, it pledged never to be undersold by the entrant. After a rugged six months of competition, Scripps-Howard bought out Cable America for a price several times the incumbent's capital costs. A third firm entered the market and was immediately confronted by Scripps-Howard's selective price-cutting strategy. The new entrant, Pacific West decided to make an issue of the discriminatory strategy through newspaper and radio advertisements suggesting that customers in sole-supplier areas demand the same low prices offered by Scripps-Howard in overbuilt areas.[8]

Consumers' Research also found evidence of selective price-cutting. In a study of competitive versus noncompetitive markets, it found that while the price of cable was lower to subscribers in areas with competition, it was higher in directly adjacent areas without competition.[9]

While price wars certainly occur, whether they are beneficial to society is open to debate. From their study of multiple versus single cable systems, Johnson and Blau concluded that while there may be short-term benefits to price war, for example, lower prices and improved services, in the long run, competition will be eliminated with the remaining operator raising prices and/or decreasing service to make up the losses incurred during the price war.[10] This implies that there are no consumer benefits to be

---

[8] Ibid., 104.

[9] Merline, et. al., op. cit, 11.

[10] Johnson and Blau, op. cit.

d

d

i

n

c

i

c

t

b

d

t

he

Te

di

a

se

ho

"A

ch

Co

Te

derived from a price war. Hazlett, Posner, and others disagree.

Hazlett believes that a price war, even a temporary one is better for consumers than none at all and that it will not prohibit entry altogether. "The temporary price war is considered a gain to consumers and the loss seen as the investors' appropriate penalty for mistaking market conditions in the pursuit of profit."[11] Posner believes that even under natural monopoly conditions the public is better served by allowing natural economic forces to determine business conduct and performance, subject only to the constraints of antitrust policy.[12]

In testifying as part of congressional oversight hearings on cable, Eddy Patterson, Mayor of Henderson, Tennessee provided evidence that consumers do benefit from direct competition in cable television delivery even though a price war may occur. Patterson stated that as soon as the second cable franchisee began installing its customers' hookups in Henderson, the incumbent began cutting its rates. "All of a sudden, Henderson, Tennessee is enjoying the cheapest cable rates probably in America today. . . Competition was the only thing that has brought about more

[11] Hazlett, "The Policy of Exclusive Franchising in Cable Television," 12.

[12] Posner, "Natural Monopoly and Its Regulation," 580.

p

H

P

m

c

n

w

l

H

t

r

e

l

p

d

i

R

e

—

Tr
be
"S
Te
21

Pe

programming and a reduction in basic cable rates here in Henderson."[13]

Product Differentiation

A second type of competitive strategy in oligopolistic markets is product differentiation. In his discussion of competition in electric utilities, Primeaux stated that the notion that a small price difference between competitors would lead buyers to purchase from the producer charging the lower price assumes that the product is homogeneous.[14] However, this assumption "ignores entirely the possibility that product differentiation is possible and that other reasons such as good service and company reputation may also exist which discourage an individual from switching to a lower priced producer."[15] F. M. Scherer has stated that product differentiation includes service, physical differences in the products supplied and the subjective images they impress on the consumer's mind.[16] Pindyck and Rubinfeld have noted that "product differentiation can exist even for a seemingly homogeneous product." In this case,

---

[13] Congress, Senate, Committee on Commerce, Science and Transportation, Oversight of Cable Television: Hearings before the Committee on Commerce, Science and Transportation, "Statement of Eddy Patterson, Mayor, City of Henderson, Tennessee," 101st Cong., 1st sess., November 16 and 17, 1989, 219 and 221.

[14] Primeaux, "Some Problems with Natural Monopoly," 80.

[15] Ibid.

[16] F. M. Scherer, Industrial Market Structure and Economic Performance, (Chicago: Rand McNally and Co.), 1970.

"differentiation will be on the basis of such things as location and services."[17]

With respect to cable television delivery, product differentiation is likely to be done on the basis of service. Service includes attitudes of customer service representatives both on the telephone and in person, response to customer complaints, and the convenience of installation. Smiley argued that product differentiation is not likely to be done on the basis of program offerings because consumers would probably prefer to have the entire menu of programming options available on one system.[18] That being the case, it is critical that entrants as well as incumbents have access to the programming services that consumers find attractive. Congress recognized this and adopted provisions which prohibit most exclusive programming contracts as part of the Cable Act of 1992.[19]

However, there may <u>some</u> differentiation in terms of program offerings, particularly if the competing systems have different channel capacities. Additionally, a system may choose to distinguish itself from its competition by providing locally-originated programming.

---

[17] Pindyck and Rubinfeld, op. cit., 433, note 3.

[18] Smiley, "Regulation and Competition in Cable Television," 132 and 133.

[19] Cable Act of 1992, Section 628.

Lo

di

Th

er

pc

ba

Fl

ac

we

19

th

ma

th

Imp

Long-run Barriers to Entry

In addition to being a competitive strategy, product differentiation also affects the viability of price cutting. That viability is also affected by long-run barriers to entry.

As was discussed at length in the chapter on franchise policy, franchise requirements are one of the key entry barriers that exist in cable television delivery. From his Florida and Sacramento studies, Hazlett learned that in addition to selective price-cutting by incumbents, entrants were also confronted with a negative political climate. In 1987

> The Florida Cable Television Association won passage of a statute which requires all new entrants to gain cable franchises and establishes strict standards and extensive procedures for their issuance. Requirements include a lengthy series of mandated public hearings and studies to establish whether any public need exists for a cable entrant and to insure that, if public need does exist, the second franchisee receives permission to enter on terms no less onerous than those included in the incumbent's franchise award.[20]

The fact that the statute was passed at the behest of the Florida Cable Television Association suggests that it may be at least partly protectionist and not necessarily in the public interest.

---

[20] Hazlett, "Duopolistic Competition in Cable Television: Implications for Public Policy," 101 and 102.

In Sacramento, the city was ordered by the court to issue a franchise to the entrant.[21] However, Hazlett found that in adopting its "so-called open entry policy" the city's cable commission did not give up its natural monopoly defense of franchising. "It issued entry licenses with a five-year life only and publicly maintained that competition would not develop and endure in the marketplace."[22] As noted earlier, as of late 1990, Pacific West Cable was providing cable service in portions of Sacramento in competition with Scripps-Howard.

In 1988 four states passed laws that to varying degrees restrict overbuilds. According to Multichannel News, in Minnesota "the so-called fairness statute would not bar two or more operators but would compel overbuilders to be subject to the same requirements as incumbent operators. . . Cities are also free to require more stringent provisions in other terms of the second system's franchise."[23] Illinois, Tennessee and Oklahoma adopted statutes similar to that enacted in Minnesota. Additionally, in the latter two states, the laws include provisions designed to thwart entry

---

[21] Pacific West Cable Company v. City of Sacramento, Cal., op. cit.

[22] Hazlett, "Duopolistic Competition in Cable Television: Implications for Public Policy," 103. In footnote 140 Hazlett states "the commission issued a 20 year franchise to the original cable operator and extended that franchise for an additional 20 years."

[23] Linda Haugsted, "Ops Won Overbuild Protection in Four States," Multichannel News, December 26, 1988, 8.

by utilities.[24] Whether these statutes will be nullified by the 1992 Cable Act is a question that will be resolved over time. In all four cases, the laws were drafted at least in part by state cable television associations and were supported by the cities. The incumbent operators seek this type of legislation to ensure that entrants are not given preferential treatment and because overbuilds result in lower penetration rates and higher marketing costs. It has been suggested that cities like Sacramento take the positions they do because they fear that competition will result in a decrease in the franchise fees received from cable. Another possibility is the reluctance of the cities to lose the rents that are transferred to them under monopolistic situations.

While some of the requirements contained in the statutes outlined above would ensure that entrants and incumbents are treated equally and fairly, others such as the series of public hearings and studies mandated by the Florida law may serve no other purpose than to delay entry.

Another tactic frequently used by incumbents to delay entry by a rival is to engage in litigation. While serious issues such as antitrust violations may be addressed in that litigation, at times the suits are rather frivolous and concern such things as the ownership of the internal wiring in subscribers' residences.

---

[24] Ibid., 8 and 34.

In addition to the strategic interactions between firms and long-run barriers to entry, the success of an overbuild is highly sensitive to market conditions. These conditions and the method used in this dissertation to study competition in cable television delivery is detailed in the following chapter.

CHAPTER VII
METHOD

Smiley stated that the degree of overbuilding in cable television is highly sensitive to such factors as the intensity of demand, the ability of the entrant to differentiate its product from that of the incumbent and the cost of cabling the community. Others have noted that population density is a critical factor in determining whether competition is feasible. A study commissioned by Times Mirror Cable Television and conducted by Malarkey Taylor Associates found that "there must be about 110 homes per mile or about 90 homes per mile with very poor reception of broadcast stations off-air" in order for two cable operators to make a profit in a complete overbuild situation.[1]

Rush Rice, of Montgomery CableVision concurred with the findings of Malarkey Taylor and added upside potential in penetration and low off-air station counts as additional factors supporting competition.[2]

---

[1] J. L. Freeman, "Study Finds Profits Elusive When Two Systems Overbuild," Multichannel News, April 13, 1987, 17.

[2] Fred Dawson, "Cable Not a Natural Monopoly, But a Tough One," Multichannel News, May 8, 1992, 13.

ch

cc

f

h

f

t

l

t

(

r

One would expect to find at least some of the following characteristics in a market with direct head-to-head competition between cable operators:

1.) a high demand for cable
2.) a population density of at least 90 homes per mile
3.) less than a full complement of over-the-air broadcast television stations and/or the presence of uhf broadcast stations
4.) terrain that makes over the air reception of television signals difficult
5.) higher than average cable penetration
6.) opportunities to increase penetration by successfully marketing both former subscribers and those who have never had cable
7.) lower than average costs of cabling the community
8.) lower than average median household incomes[3]

One would also expect to find evidence of dissatisfaction with the incumbent operator in markets with head-to-head competition.

For competitive entry to occur, the incumbent's franchise must be nonexclusive and there should be evidence that the franchising body is truly receptive to competition. If a city had been involved in litigation because it refused to grant a second franchise despite a stated policy of non-exclusive franchising, one would not consider such a municipality a friend of competition.

Based on Smiley's findings and Hazlett's studies of overbuilding in Florida and California, the potential

---

[3] While this appears counterintuitive, Primeaux found that cities with lower than average median household incomes were likely to be supportive of competition. This is due to the fact that households with lower than average median incomes are thought to be more price sensitive than higher income households.

er
pr
co
le
de
lo
wa

ex
op
th
th
th
co
or
co

i
s
b
F
e
e
e
s
a

entrant should anticipate that the incumbent will reduce its price in the overbuilt areas in an effort to thwart competition. This is likely to lead to a price war, at least in the short run. The duration of the price war will depend in part on the ability of the incumbent to run at a loss and the ability of the entrant to withstand the price war and differentiate its product from that of its rival.

Montgomery, Alabama and Paragould, Arkansas are two examples of cities where direct competition between cable operators occurs. Through case studies of these two markets this dissertation determines which of the market conditions that the literature suggests impact competition occur in these situations. The study also identifies which of these conditions are the most critical to successful entry and outlines additional factors that affect the feasibility of competition in cable television delivery.

Second, the case studies consider the political climate in Montgomery and Paragould as it relates to entry by a second cable operator. Third, the studies examine the behavior of the incumbent in response to entry by a rival. For example, the studies assess whether the incumbent engaged in price cutting, entered into litigation in an effort to prevent entry and/or attempted to subject the entrant to franchise requirements that are at least as stringent as those under which it operates. The studies also address how the entrant has reacted, on what dimensions competition has occurred, and whether this competition has resulted in improved service and/or lower prices for subscribers. Fourth, the studies determine the extent to which these overbuilds have been successful, and assess the likelihood of their continuing operation.

One of the objectives of the dissertation was to gain information that can be applied to other markets and used to affect public policy.

As discussed in Chapter I, the case study method was selected because it enables the researcher to take an in-depth approach to complex issues and, direct competition in cable television delivery is certainly a complex issue.

To identify cases for study, several techniques were used. First, a list of markets with overbuilds compiled by the research firm, Paul Kagan Associates, Inc. was crossreferenced to the 1991 Television Cable Factbook. The Kagan list had 65 cases of duplicative franchises. Of these, 15 had only one operator listed in the Factbook. Four more areas were subdivided into smaller areas with one operator each. Five were crossreferenced to other areas with one operator each, and three were not listed. Thirty eight cases remained.[4] Of the remaining cases four are municipal overbuilds and were considered separately. The

---

[4] See Appendix B for the complete list of 65 cases. Montgomery is a recent overbuild and was too new to be included in either the Kagan list or the Factbook.

1990 Consumers' Research study provided an additional check on the list of overbuilds.

Both scholarly and trade journal articles were used to identify individuals who were involved in overbuilding. The Executive Director of the Competitive Cable Association was contacted as a potential source for previously unidentified cases and to obtain suggestions on cases to study.

Among the persons identified through these sources was Harry P. Cushing, III, the President and Chief Executive Officer of Telesat, the nation's largest overbuilder and Rush Rice, President of Montgomery CableVision and Entertainment, Inc. Both were interviewed via telephone in late August/early September, 1992 and provided insight on the issues related to competitive cable. Because the Telesat systems were studied in-depth by Hazlett the decision was made to study others.[5]

Montgomery, Alabama was selected for study for several reasons. First, it is an example of an independent operator competing with an established multiple system operator. Montgomery CableVision, the new entrant, is the cable arm of a locally-owned investment banking firm. Some of the company's stockholders also have an ownership interest in the Troy, Alabama system which is a successful overbuild.

---

[5] Additionally, according to The Wall Street Journal, Time Warner, Inc. agreed to buy out the Telesat systems in central Florida in December, 1992.

"Florida Rival Bought Out", The Wall Street Journal, December 10, 1992, A10.

The incumbent, Storer/TCI is owned by the largest multiple system operator in the country, Tele-Communications, Inc. Montgomery CableVision was granted a franchise in January, 1990 and began construction shortly thereafter. The system is approximately 20 percent complete.

Second, Montgomery is a reasonably sized city within a distinct television market. Montgomery/Selma is the 105th largest market according to both Nielsen and Arbitron. Third, the city has a favorable policy towards competition in cable. It passed two ordinances designed to foster that competition. One ordinance prohibits program exclusivity in restraint of free trade and the other requires any operator who lowers cable rates in one geographic area to do so in all areas of the franchise. Fourth, Montgomery CableVision joined the city of Montgomery in litigation with Turner Network Television (TNT), ESPN and Storer/TCI over the rights to the cable networks' programming.

Preliminary findings suggested that the situation in Montgomery is somewhat typical of those where an independent operator competes with a large multiple system operator. The entrant asserted that the incumbent, Storer/TCI, uses its market power, particularly with respect to programming, and its ability to engage in price cutting and litigation as part of its competitive strategy. It is unlikely that one would see this type of behavior in a market where two relatively small independent operators competed with each other.

Municipal overbuilds present a set of issues that are distinct from those related to situations where one private operator competes with another. Brenner and Price have stated "Nothing in the 1984 (Cable) Act forbids municipal ownership of cable service"[6] and the 1992 Act specifically permits city overbuilds.[7] Brenner and Price also stated that city ownership can raise antitrust liability especially where a city-owned system competes with a privately-owned system outside city limits. In hearings before a U.S. Senate Subcommittee, Richard Berman, a communications attorney and former general counsel, executive vice president and director of Warner Cable testified that "municipal overbuilds waste taxpayers' money and move government into a realm where it doesn't belong, namely editorial control."[8]

Municipal ownership of a cable system has its pros and cons. On the pro side are arguments that municipal ownership aids the overall economic development of a city

---

[6] Brenner and Price, op. cit., 5-53 Section 3.06 [4][c].

[7] Cable Act of 1992, Section 621.

[8] Congress, Senate, Subcommittee on Antitrust, Monopolies and Business Rights of the Committee on the Judiciary, Competitive Issues in the Cable Television Industry: Hearings Before the Subcommittee on Antitrust, Monopolies and Business Rights of the Committee on the Judiciary, 100th Cong., 2nd sess., March 17, 1988, 158.

through the delivery of services and assistance via cable and results in lower subscriber rates, new sources of jobs and revenues and a better quality of service.[9] The downside of public ownership comes from problems in obtaining financing, a city's lack of expertise in operating a cable system, potential conflicts of interest, restraint of trade and the possible politicization of programming and access allocation.[10]

In addition to the four municipal overbuilds included in the list compiled by Paul Kagan Associates, Inc. three more were identified.[11] Of these, Paragould, Arkansas is perhaps the most successful. The city began operation of its system in March, 1991 in competition with Cablevision Systems, a large multiple system operator. The city's system is 100 percent complete. There are about 3200 subscribers, about 50 percent of the total number of cable customers in Paragould. Prior to beginning construction, the city successfully litigated its case in the federal and

---

[9] Jean Rice, "Public Ownership Models," in Guide for Local Policy, CTIC Cablebooks Volume II, Nancy Jesuale ed., (Arlington, Virginia: Cable Television Information Center, 1982).
Eli M. Noam, "Towards an Integrated Communications Market: Overcoming the Local Monopoly of Cable Television," Federal Communications Law Journal 34:2, 209-257.

[10] Ibid.
Michael J. Henderson, "Municipal Ownership of Cable Television: Some Issues and Problems" Comm/Ent Law Journal 3:4 667-683.

[11] These are Niceville, Florida, Paragould, Arkansas, and Elbow Lake, Minnesota.

state courts. As noted in Chapter I, the history of the Paragould case and the current status of the overbuild illustrates the type of behavior in which an incumbent engages to thwart competitive entry, particularly by a municipality and the legal conditions under which a city can provide cable television service in competition with a private operator. This is especially relevant in light of the passage of the 1992 Cable Act.

Similar approaches were used to study both Montgomery and Paragould. In Montgomery, personal interviews were conducted in February, 1993 with representatives of both the incumbent operator and the overbuilder. The entrant was asked specifically why it chose Montgomery as a market to overbuild and the steps it took to ensure that entry would be achieved. To assess demand and other market factors, feasibility studies conducted by the entrant were examined. Questions pertaining to the strategies it uses to compete were also be posed. The incumbent was asked how it has reacted to the overbuilder, particularly from a price/service perspective. Interviews were also conducted with representatives of city government to ascertain why the decision was made to allow a second cable operator to construct a system in Montgomery.

Press releases, newspaper reports, city council meeting minutes and resolutions, cable ordinances, franchise agreements, and other public documents were reviewed to obtain information on the history of cable franchising and service in Montgomery. Correspondence between various parties provided additional information on the competitive situation in Montgomery. The entrant was forthcoming with financial information, making it possible to assess the system's performance vis a vis the average U.S. cable system. The incumbent provided summary information on the franchise fees it paid to the City of Montgomery, allowing the researcher to extrapolate the system's overall subscriber revenues and compare its performance to the industry average. Both companies also supplied information on their pay-to-basic ratios, again making it possible to draw comparisons between these systems and the industry average.

Because the City of Paragould was involved in a series of suits with the incumbent, Cablevision Systems, court proceedings were used to identify some of the legal issues that are unique to situations where a municipality attempts to overbuild a private operator. As in Montgomery, personal interviews were conducted in February, 1993 with representatives of both cable systems. City officials were asked specifically why they decided to overbuild an established operator. Questions relating to competitive strategy were also posed to both operators. Press releases, newspaper reports, city council meeting minutes and resolutions, cable ordinances and franchise agreements and correspondence between parties were reviewed to obtain information on the history of cable franchising and service in Paragould.

Because the city's system is owned by the people of Paragould, financial data was available that was used to assess the system's performance vis a vis the average U.S. cable system. In Paragould, information was also available on the franchise fees paid by the incumbent, making it possible to extrapolate that system's overall subscriber revenues and compare its performance to the industry average. As was the case in Montgomery, both companies also supplied information on their pay-to-basic ratios, again making it possible to draw comparisons between these systems and the industry average.

The primary objective of these studies was to answer the research questions outlined in Chapter I. It was expected that by answering these questions a picture of what direct competition in cable television delivery looks like would emerge. It was also expected that the results of these studies would have implications for public policy. Finally, the results have been used to develop an agenda for further research.

Chapter VIII
MONTGOMERY

Market Characteristics

Montgomery, the capital of Alabama, has several of the market characteristics one would expect to find in a city with two competing cable companies. First, there is a high demand for cable and cable penetration in Montgomery is higher than the national average. Although the terrain is flat, about 72 percent of the homes passed subscribe to cable.[1] Second, the city has an average population density of about 100 homes per mile.[2] Third, although Montgomery is served by five commercial and one public broadcast television stations, only two of the stations are VHF.[3]

---

[1] Gilbert, interview.
The average cable penetration in the United States as of 1992 is approximately 62 percent of homes passed.
Paul Kagan Associates, Inc., August 31, 1992 reported in Cable Television Developments, National Cable Television Association, October 1992, 1-a.

[2] William B. (Bill) Blount, Chairman and Rush Rice, President, Montgomery CableVision and Entertainment, Inc., interview by author, tape recording, Montgomery, Alabama, February 22, 1993.

[3]. Montgomery is served by the following broadcast television stations: WHOA, Channel 32 (ABC); WAKA, Channel 8 (CBS); WSFA, Channel 12 (NBC); WCOV, Channel 20 (FOX), WAIQ, Channel 26 (PBS); and WMCF, Channel 45 (Independent/Religious).
1992 Television Cable Factbook

Fourth, the cost of cabling Montgomery is low relative to other parts of the country. Approximately 85 percent of the system is aerial at a cost of $15,000 per mile including make ready, while 15 percent is underground at a cost of $23,000 to $24,000 per mile.[4] Additionally construction costs in Montgomery are low, with labor running about 40 cents per foot, aerial.[5] Fifth, the average median household income in Montgomery in 1989 was $26,311 almost $5,000 lower than the national average of $30,056.[6]

Political Factors

Although many of the market characteristics one would expect to find in a city with competing cable companies are present in Montgomery, it appears that it was the favorable political climate that more strongly influenced the entrant's decision to compete.

Montgomery CableVision and Entertainment, Inc. (Montgomery CableVision) was incorporated by William B. Blount, a principal in the investment banking firm of

---

[4] Rice interview.

[5] Ibid.
Rice compared Montgomery CableVision's construction costs to those incurred by Telesat in its attempt to overbuild various multiple system operators in central Florida. Because of zoning and environmental standards, Telesat was forced to build all of its systems underground at a cost of approximately $30,000 per mile.
On average, it costs $12,000 per mile aerial and $20,000 per mile underground to construct a cable system in the United States.

[6] 1990 Census of Population and Housing, Summary Social, Economic and Housing Characteristics, U.S., November 1992.

Blount, Parrish and Roton, on December 29, 1989 for the purpose of constructing and operating a competing cable system in Montgomery, Alabama. The company applied for a franchise on January 16, 1990. The franchise was granted by the city council on March 6, 1990 and was formally accepted by the company on April 4, 1990. Construction began that summer and the first subscribers were connected on October 19, 1990.[7]

Blount cited a good relationship with city council as one of the four criteria necessary for an overbuilder to survive.[8] He said, "although we didn't have an outstanding relationship with the mayor, we had a very good relationship with city council."[9]

Montgomery city government is comprised of a mayor and nine city council members. By all accounts it is dominated by the mayor, Emory Folmar and City Councillor, Joe Reed.[10]

---

[7] "Description of Company," Proposal for Tyson Square, Montgomery CableVision and Entertainment, Inc., September 8, 1992.

Montgomery City Ordinance No.16-90 formally granted Montgomery CableVision a franchise to construct and operate a cable television system in Montgomery, Alabama.

[8] The other three criteria outlined by Blount are density, a reservoir of ill will against the incumbent, and the ability to obtain financing.

[9] Blount interview. He also noted that the absence of a cable commission in Montgomery was an important factor in the company's decision to enter. "We wouldn't have done it if there were a commission . . . too much bureaucracy."

[10] Councilman Rick McBride, Ed.D., interview by author, tape recording, Montgomery, Alabama, February 24, 1993.

Mayor Folmar is a Republican, active in politics at both the state and local level while Reed and Blount have strong connections with the Democratic Party. Reed is the second in command of the Alabama Education Committee, the state's most powerful lobby, is active in the Alabama Democratic Conference, the state's largest Afro-American political organization and is chair of the Board of Trustees at Alabama State University. Blount is Executive Director of the Democratic Party in Alabama.[11]

Because of Reed's influence at the state level, he and Folmar have developed a working relationship with respect to issues in Montgomery, despite their political differences. Further, there is a consensus that primarily because of the association between Blount and Reed, "the wheels had been greased" with city council before Montgomery CableVision formally filed its franchise application.[12]

Stephen Merelman, Reporter, The Montgomery Advertiser/Journal, interview by author, tape recording, Montgomery, Alabama, February 23, 1993.
Gilbert interview.

[11] According to Merelman, Blount was president of student government at the University of Alabama in the early 1970s. The university is a "real breeding ground for politicians" in the state. Most of the state's democratic leaders have come out of "The Machine", an organization of fraternities and sororities at the University of Alabama that sponsors its own candidate for student government president. Blount was a product of this process and has been part of this network "since day one."

[12] Blount, Rice, Gilbert and Merelman interviews.
Jim Upchurch, "The Politics of Cable," Montgomery City Magazine, 170, February 1, 1990, 13 and 14.

Prior to submitting the company's franchise application, Blount drafted and presented to council an ordinance whose primary purpose was to amend sections of the 1976 ordinance which "provided for the construction, operation, regulation and control of cable television systems."[13] The ordinance in both its original and amended forms is explicitly nonexclusive stating, "nothing herein shall be construed to prevent the City Council from granting identical or similar franchises to more than one person within all or any portion of the City."[14] However, it also requires the city council to publish "its intention to award such a franchise or franchises", solicit the filing of

---

Tom Kerver, "Genesis for Decision," CableVision October 8, 1990, 64 and 66.

[13] ORDINANCE NUMBER 9-90, "AN ORDINANCE TO AMEND ORDINANCE NO. 50-76, AN ORDINANCE OF THE CITY OF MONTGOMERY ALABAMA ADOPTED JUNE 22, 1976, PROVIDING FOR THE CONSTRUCTION, OPERATION, REGULATION AND CONTROL OF CABLE TELEVISION SYSTEMS."

The original ordinance, 50-76 was an enabling ordinance and set out the terms and conditions under which a cable system was to operate. In an undated letter from the city's cable committee to the mayor, it was recommended that Storer, the major stockholder of Montgomery Cable Television, Inc. be given a franchise to operate a cable system in Montgomery. According to Jack Gilbert, Storer's present general manager, there were three major contenders for the original franchise. On October 19, 1976 the city adopted Ordinance 101-76, "AN ORDINANCE OF THE CITY OF MONTGOMERY, ALABAMA, GRANTING A FRANCHISE FOR THE CONSTRUCTION, ACQUISITION, OPERATION, AND MAINTENANCE OF A CABLE TELEVISION SYSTEM WITHIN THE CITY LIMITS OF THE CITY OF MONTGOMERY, ALABAMA TO MONTGOMERY CABLE TELEVISION, INC."

[14] An Ordinance No. 50-76 As amended by Ordinance No. 9-90 enacted January 16, 1990, "AN ORDINANCE OF THE CITY OF MONTGOMERY, ALABAMA PROVIDING FOR THE CONSTRUCTION, OPERATION, REGULATION AND CONTROL OF CABLE TELEVISION SYSTEMS."

competing applications, and accept applications "from all interested parties for a period of 60 days."[15] The 1990 ordinance, No. 9-90, eliminated that requirement. As amended, Ordinance 50-76 states

> City Council may, by ordinance, award a franchise to construct operate, and maintain a cable television system within all or any portion of the City to any person . . . who makes application for authority to furnish a cable television system which complies with the terms and conditions of the Ordinance.[16]

With the elimination of the requirement that the city open the franchising process to all interested parties, Montgomery CableVision was able to expedite the approval of its application.[17]

Perhaps more importantly, Ordinance 50-76 was also amended in the following ways: First, a paragraph (2) was added to Section 5. Limitations of Franchise which prohibited a franchisee from engaging in behavior which would "unlawfully damage any business competitor".[18] Second, a paragraph (3) was added to Section 14. Rates Charged to Subscribers which specified that "in no event

---

[15] Ordinance 50-76, Section 5 Paragraph 2.

[16] Ibid. The ordinance was passed by city council with an 8 to 0 vote on January 16, 1990. Reed was absent from the voting having left the meeting immediately prior to the ordinance's introduction.

[17] As amended, Ordinance 50-76 continues to require the city council to notify the public of its acceptance of a franchise application, to accept comments relative to the application, and to hold a public hearing.

[18] Ordinance 50-76 as amended, Section 5.(2).

shall rates be established so low for any class of subscriber or for any geographic location as to prevent, discourage, restrict or diminish competition in the furnishing of cable services."[19] The latter two amendments subsequently became the basis of a suit filed against the City of Montgomery by Storer Cable Communications.

In protesting the adoption of the amendments to the ordinance, Storer's attorney noted, that the amendment to Section 5 "attempts to create separate causes of action for undefined unlawful acts and to create new causes of action based not upon the violation of those statutes and regulations but upon the ordinance itself."[20] He also argued that the proposed change to Section 14 "attempts to create preferential treatment for a new cable operator and to prohibit competition in particular geographic locations."[21]

> It is clear that the change is an attempt to create a cause of action in favor of a new cable operator against the existing franchisee should the existing franchisee attempt to respond competitively to rates established by the new operator in limited geographic locations.[22]

---

[19] Ibid., Section 14. (3).
Section 623 of the Cable Act of 1992 has a subsection (d) that, like the Montgomery ordinance, requires a uniform rate structure throughout a franchise area.

[20] Thomas Lawson, Jr., Attorney for Storer Cable Communications, "Statement to Montgomery City Council on January 16, 1990," 6.

[21] Ibid.

[22] Ibid.

As it began to contract with programmers for services to offer on its system, Montgomery CableVision encountered resistance from a number of providers including HBO, CNBC, Bravo, and TNT. As a result and on the advice of legal counsel, in August, 1990 Blount persuaded Councillor Rick McBride to introduce an additional ordinance designed to clarify the types of anticompetitive behavior prohibited by the January amendment to Section 5 of Ordinance 50-76.[23] Among other things, this ordinance, No. 48-90, prohibited exclusive program contracts by making it unlawful for a cable operator, distributor, or program supplier "to restrain or attempt to restrain . . . the production, control or sale of program material or program services used in the provision of cable television service within the City."[24]

The reluctance Montgomery CableVision encountered in its initial dealings with cable programmers was one of the

---

[23] At the same meeting, McBride also introduced a resolution designed to "PROMOTE FAIRNESS AND COMPETITION IN CABLE TELEVISION." Although general in tone, the resolution's specific purpose was to expedite the attachment of Montgomery CableVision's equipment to utility poles.

"Regular Meeting of the Council of the City of Montgomery," August 7, 1990.

Brian Ponder, "City council presides over cable TV war," The Alabama Journal, August 8, 1990, 1a.

[24] Ordinance 48-90, "AN ORDINANCE OF THE CITY OF MONTGOMERY ALABAMA TO PROMOTE COMPETITION IN THE PROVISION OF CABLE TELEVISION SERVICE," Section 3, adopted August 21, 1990.

The language used in the Montgomery ordinance prohibiting exclusive program contracts is quite similar to that employed in Section 628 of the Cable Act of 1992.

few things the company had failed to anticipate. According to Blount, "we had been led to believe by these boys in Troy that we could get programming through them."[25] The passage of the ordinances prohibiting exclusive program contracts was part of Montgomery CableVision's overall strategy to "pick the fight" with its competitor. According to Rice,

> Prior to this case, the only recourse a competitive operator had was a Sherman Act case . . . It could take years and cost millions of lives. You're talking about a major piece of litigation which a small operator can't afford. They can't pay the legal freight. This way, with the city actually making a law . . . it's against the law in Montgomery, Alabama to have an exclusive programming contract in restraint of trade. . . the monkey was put on TCI's back. It also put it (any litigation) on a faster track.[26]

As was the case with the January, 1990 ordinance which made it possible for Montgomery CableVision to expedite the franchise process, Blount approached the mayor and city council privately prior to McBride's public presentation of the August ordinance. In an August 1, 1990 memorandum from Blount to Folmar and City Council, Blount outlined his

---

[25] Blount interview. The "boys in Troy" to which Blount referred were a group of investors led by Harold Freeman. He had successfully overbuilt the Storer system in Troy, Alabama, a city about 40 miles south of Montgomery. It was Freeman who first approached Blount with the idea of overbuilding Montgomery.

[26] Blount and Rice interview. The reference to TCI relates to the acquisition of Storer by Comcast and TCI in 1988. Subsequently, TCI has taken over control of all of the Storer systems. However, in Montgomery, the incumbent cable operator is most frequently referred to as Storer Cable Communications.

company's difficulties in obtaining programming. "We have been denied access to Turner Network Television (TNT), the Consumer News and Business Channel (CNBC), and the Sunday Night NFL package offered by ESPN."[27] Blount argued that the reason that those programmers refused to deal with Montgomery CableVision was a result of "their common ownership by Storer's parent or by other coercion."[28] Blount further argued that exclusive programming makes no economic sense since the programmers are

> presumably in the business of selling their programming to as many subscribers as possible. They are paid by cable system operators based on their number of subscribers and their advertising rates are based on the number of subscribers who have access to their programs.[29]

And,

> We suspect that these programmers would not only comply with a Montgomery City ordinance prohibiting exclusive contracts--we feel they would welcome a city taking a stand that would begin to remove Big Cable's pistol from the side of their heads.[30]

In a separate letter to Folmar, Blount noted "our

---

[27] "Memorandum from Bill Blount to Mayor Folmar and City Council Re: Anti-Competitive Tactics of Major Cable Operators and Programmers," August 1, 1990, 1.

[28] Ibid.

[29] Ibid.

[30] Ibid., 2.

attorneys have advised us . . . that the City Council possesses the legal power to enact a local ordinance prohibiting this abusive business behavior."[31]

In response to the adoption of the ordinance prohibiting exclusive program contracts, in September, 1990 Storer filed suit in federal court against the city of Montgomery and Folmar. The lawsuit alleged that both this ordinance and the amendment to Ordinance 50-76 adopted in January, 1990 requiring uniform pricing "were designed to prevent Storer from effectively and fairly competing for cable subscribers."[32] The suit also charged that

> contrary to their stated purpose, the ordinances will reduce rather than promote competition by unlawfully restricting the ability of programmers and distributors to use normal competitive tools such as exclusivity, which is common to many media industries.[33]

In November, 1990 Montgomery CableVision was allowed to intervene fully on behalf of the city because, the company's "ability to compete with Storer and fulfill the terms of its

---

[31] Letter from Blount to Folmar, "Re: Ordinance to Promote Competition in the Provision of Cable Television Services," August 1, 1990.

[32] Storer Cable Communications Press Release, September 6, 1990.

[33] Ibid.
Also, John Gerome, "Storer sues Montgomery over Cable TV ordinances," The Montgomery Advertiser, September 7, 1990, 1a and 12a.
"Storer Goes to Court over City Cable Rules," Broadcasting September 24, 1990, 59.
"Storer, ESPN Sue Montgomery Over Regulations," Multichannel News, September 24, 1990, 9.

own franchise agreement will be harmed if the court invalidates the two cable television ordinances."[34]

Although a summary judgement on the suit was issued in October, 1992, many questions remain unresolved. According to Gilbert, the summary judgement left the ordinance intact but removed a line which said if Storer had any exclusive contracts, the company would be in automatic violation and would risk the loss of its franchise.[35]

Blount referred to the October ruling as "very confusing". The case is set for trial in August, 1993 to determine if Storer's exclusive contracts are in fact anticompetitive. Both sides concede that the litigation was extremely costly and that many of the issues in the suit will probably be rendered moot by the provisions of the 1992 Cable Act which require access to programming and a uniform rate structure.[36]

Additionally, the suit substantially delayed Montgomery CableVision's entry into significant portions of the city because of the costs incurred by the company in litigation and because of the chilling effect the litigation had on capital. According to Blount, "capital wouldn't come to us

---

[34] Stephen Merelman, "CableVision joins city in defending cable competition ordinances," The Alabama Journal, November 29, 1990, 2a.

John Gerome, "CableVision joins city in lawsuit," The Montgomery Advertiser, November 29, 1990, 1b.

[35] Gilbert interview.

[36] Cable Act of 1992, Section 623 (d) and Section 628.

until they could see a resolution of the court case . . .we couldn't raise any money."[37] In both the Montgomery and Paragould cases, litigation proved to be an effective entry-delaying device.

In his initial reaction to Storer's filing of the suit, Blount was quoted as saying, "'This is just another diversionary tactic from a monopolist trying to keep competition out.'"[38] While the litigation may have been Storer's most effective tactic in its attempt to obstruct entry by a rival, it was not the only course the company pursued.

Strategic Behavior

In his statement before city council on January 16, 1990 Storer's attorney, Thomas Lawson, Jr. argued that determining whether a second cable operator would be beneficial to the city of Montgomery could only be made "after a thorough analysis and investigation."[39] Lawson also noted that many cities had engaged consultants to help them determine the advisability of granting a second franchise. Additionally, he stated that "Storer would be willing to bear part of the costs of retaining a consultant of the City's selection, perhaps with similar backing from

---

[37] Blount interview.

[38] Elizabeth Hayes, "Storer files lawsuit to stop new city regulations," The Alabama Journal, September 7, 1990, 1a.

[39] Lawson statement, 2.

Montgomery CableVision to make an appropriate study and come up with recommendations."[40] In a March, 1990 letter to the mayor and city council, Michael S. Tallent, then President of Storer Cable Communications, followed up on Lawson's statement and presented seventeen questions outlining the issues which the company felt the city should consider prior to granting a second franchise. Many of the questions relate to Montgomery CableVision's assurances to the city and the company's commitment to construct and operate a competing cable system in Montgomery.[41] Tallent's letter also states that "every major study ever done on a proposed overbuild has concluded that overbuilds are not economically viable in the long-run and do not result in sustained competition."[42]

In response to this letter, Blount addressed each of the seventeen questions, paying particular attention to the

---

[40] Ibid., 4.

[41] Letter from Michael S. Tallent, Storer Cable Communications to Folmar and members of the Montgomery city council, March 1, 1990.

One of the questions posed by Tallent implicitly asked whether the principals in Montgomery CableVision were greenmailers whose real intent would be "to sell the franchise for any intrinsic value it may have".

[42] Ibid.

The studies to which Tallent referred include an October 7, 1987 Touche Ross report to Dade County, Florida concluding that overbuilds in Dade County are not financially feasible and do not endure and a Telecommunications Management Corporation report to Hillsborough County, Florida that overbuilds are transient in nature and that participating operators generally suffer economically.

studies which found competition in cable to be infeasible in the long-run.

> Our study of competitive cable markets revealed that competing systems actually have a very good record of success. . . We must raise our own questions as to the objectivity and relevance of the studies cited by Mr. Tallent. Was Touche Ross and Company employed by Storer or Tele-Communications, Inc. (TCI) to perform these studies? Is Telecommunications Management Corporation itself a subsidiary of TCI?[43]

Neither Lawson's statement nor Tallent's letter were able to persuade the city council to delay awarding Montgomery CableVision a franchise. While it is widely agreed that Blount had successfully "greased the wheels" of city government prior to submitting his franchise application, it has also been said that Storer was caught "asleep at the wheel."[44] Lawson's statement and Tallent's letter were only half-hearted attempts to delay Montgomery CableVision. Tallent's letter posed questions that were clearly addressed in Montgomery CableVision's application.

For example, the letter asked "Has Montgomery CableVision committed itself to a construction plan in which service will be extended in a contiguous fashion, so as to prevent 'cherry-picking' of high-density areas at the expense of areas that may be less profitable?"[45] In compliance with Ordinance 50-76, Montgomery CableVision's

---

[43] Response of Blount, to Storer letter, March 6, 1990.

[44] Blount and McBride interviews.

[45] Tallent letter, 3, question 13.

application outlined the company's intended geographical construction of the system

> It will be the policy of Montgomery CableVision & Entertainment, Inc. to construct its system in a manner that will serve all areas of the City equally. For this reason, the Company will institute a policy wherein it will construct one linear mile of plant to the west of its headend for each mile constructed to the east of its headend. No advantage will be afforded to residents living in any particular area of the City over residents living in any other section of the City.[46]

It is likely that the application detailed the company's construction plans as noted above in an effort to anticipate and fend off any charges of "cream-skimming" that might have been made by Storer.

Through the research that the company did prior to submitting its franchise application, Montgomery CableVision was able to anticipate and counter most of the delaying tactics used by Storer. However, according to Blount, in addition to the problems associated with obtaining programming, one thing that wasn't anticipated was the resistance Montgomery CableVision met when it tried to attach its equipment to utility poles owned by South Central Bell.[47] Both Blount and Rice noted that while the pole

---

[46] "Ordinance 50-76, Section 18(1)(c) Description of the System to be Built in Montgomery," FRANCHISE APPLICATION SUBMITTED TO THE MONTGOMERY CITY COUNCIL JANUARY 16, 1990, Montgomery CableVision and Entertainment, Incorporated.

[47] In Montgomery some of the utility poles are owned by Alabama Power Company and some are owned by the Regional Bell Operating Company. In his capacity as an investment banker, Mr. Blount had done some work with Alabama Power and as a result felt that he and his associates had done a good job of

attachment delay was a nuisance, "we didn't really have the kind of stuff we had been warned about."[48]

In their first days as rivals both companies employed a variety of tactics as they attempted to attract or retain subscribers. In a letter to Lewis King, then General Manager of Montgomery CableVision, Gilbert detailed some installation complications that Storer had experienced since Montgomery CableVision had begun installation and hook-up to subscribers. "Such action is contrary to Alabama common law and statutory law and is violative of certain regulations of the Federal Communications Commission. We demand that Montgomery CableVision cease and desist its illegal activities."[49]

The alleged illegal activities to which Gilbert referred were Montgomery CableVision's use of existing internal wiring to connect customers. Storer claimed that it had installed the wiring and as such the wiring belonged to Storer. King replied in a rather sarcastic letter to Gilbert.

> You mention one instance in which you say our crews used internal wiring, possibly installed by Storer to connect a new subscriber of ours. In such an instance, if you believe that a subscriber has breached his or her agreement with you concerning

---

preparing the power company for what to expect. The issue of pole attachment was resolved in August, 1990 when city council passed resolution No. 246-90. See note 24, p. 86 supra.

[48] Blount and Rice interview.

[49] Letter from Gilbert to King, October 11, 1990.

> ownership of internal wiring to receive cable transmissions from another source, then your recourse is against the subscriber.
>
> If upon receipt of notice of termination by a subscriber, you wish to collect the internal wiring, please notify the subscriber of this fact and make arrangements to collect the wiring promptly. We will gladly replace the subscriber's internal wiring ourselves.
>
> Thank you for you letter, although it is unfortunate that you felt it necessary to draft this correspondence in the form of a demand letter. We appreciate your help during this transition period and you can be assured that we will do everything possible to make this process a smooth one for both companies and our subscribers.[50]

There was no further action by either party with respect to the ownership of internal wiring.[51]

Subsequently Montgomery CableVision's salespeople were accused of telling customers that Storer's cable was not properly grounded and if lightning struck the cable, the customer's television set would explode. Rice noted that

---

[50] Response of King, to Gilbert letter, October 16, 1990.

[51] In Paragould, Arkansas a similar dispute arose over the ownership of internal wiring. The issue is discussed at length in Chapter IX.

When asked about the ownership of internal wiring, Rice responded, "Here's how it works in the real world. We don't know who owns that wire. . . If they put it in they may own it. We don't know. We use the internal wiring of a house unless it's substandard. . . In the real world--they don't care if we use their wiring. We don't care if they use our wiring. If I've got one of their customers, they think one day they can get that customer back. If they get one of mine . . . The wire is just the medium. In the real world, it's a nonissue. But the courts around here have held it's the property owners who own the wire.

Rice interview.

the salespeople were told to desist when company management learned of that tactic.[52]

In May, 1991, it was reported that Storer had refused to remove its equipment from an apartment complex that had signed an exclusive contract with Montgomery CableVision.[53] By mid-1991 it appeared that the companies had entered into a truce.

Despite the delay tactics and the chilling effect that litigation had on financing, as of late February, 1993, Montgomery CableVision was competing with Storer in approximately twenty percent of Montgomery.[54]. That competition takes place, to varying degrees, in terms of price, customer service and program offerings.

---

[52] Rick Harmon, "Gloves coming off in city's cable duel," The Montgomery Advertiser, January 29, 1991, 3.

[53] Stephen Merelman, "Cable war heats up; Storer won't remove lines from apartments," The Alabama Journal, May 1, 1991, 1a and 8a.

John Gerome, "Apartment suit targets Storer Cable," The Montgomery Advertiser, May 2, 1991, 4.

[54] At the end of 1992, Montgomery CableVision passed 13,200 homes, had a gross penetration of 35 percent and an estimated market share of 50 percent.

Montgomery CableVision and Entertainment, Inc., "Operating Projections 1993 through 1996."

Gilbert, stated that he believes Blount and Rice seriously underestimated the make-ready costs of the overbuild and that the underestimation led to "tremendous" cost overruns in Montgomery CableVision's first year of operation. As a result, the company had been unable to overbuild as much of Montgomery as had been planned.

Price Competition

As detailed in Chapter VI, Smiley noted that when considering entry into a cable television market, the potential entrant should anticipate that the incumbent will reduce its price to meet the competitive challenge.[55] In their studies Hazlett and Consumers' Research found evidence of selective price cutting in areas where there was direct competition in cable television delivery. It is quite likely that Blount and Rice anticipated that Storer would engage in some form of selective price cutting and as a result they drafted the uniform pricing ordinance to circumvent the incumbent's ability to employ this type of strategic behavior.

To date there has not been an all-out price war waged in Montgomery. In addition to the passage of the uniform pricing ordinance, there are at least two reasons for this. First, from the outset Montgomery CableVision recognized that it couldn't fight and win a price war. This despite the fact that it argues that its costs per subscriber are much lower than that of the incumbent.[56] Second, while

---

[55]. see Chapter VI, p. 59.

[56] Rice interview. He said that although "big cable" claims to be the low cost provider, "the one thing they don't toss into the mix in any of the studies you see, they don't throw in what they paid for their cable systems. If you look at the proformulas from the standpoint of who's the low cost provider, they're amortizing debt on $2800 per subscriber that they 100 percent financed in 1987, in the glory years . . . We don't have the cost basis of an MSO. Everything in this system; operating losses, depreciation, everything--we've got

subscribers may be price sensitive, cable itself is not very price elastic.[57]

In developing its competitive strategy in Montgomery, Storer was able to draw upon its experience competing with an overbuilder in Troy, Alabama. According to Gilbert, "in Troy we lost a lot of customers to him (the overbuilder) over the years so, we dropped our price dramatically in Troy and it may have stopped some people from going to him. But it wasn't enough to entice those people who had switched to come back."[58] In Montgomery the price of basic cable television service was $18.25 for 29 channels on January 1, 1990.[59] In its franchise application, Montgomery

---

about $900 per sub in the cable system.

[57] Gilbert stated that he believes that cable isn't price elastic. However, he also stated that the customer is very price sensitive. "There's very few people in this country who don't think that cable is too expensive."

Among the evidence to support the argument that cable subscribers are price sensitive is a January 1990 letter to Folmar signed by eleven individuals who expressed their belief that Storer had outpriced itself in Montgomery.

Additional letters to the mayor in response to the potential of entry by Montgomery CableVision pointed to the high prices being charged for cable.

Finally, widespread consumer dissatisfaction with cable rates was responsible, at least in part, for the passage of the 1992 Cable Act.

[58] Gilbert interview.

[59] In December 1989 Storer announced that it was raising its price for basic cable service from $16.95 to $18.25 per month, an increase of eight percent. The company's first increase occurred in 1984 when city council permitted Storer to raise the monthly price of basic from $7.50 to $9.50 for 12 channels. The company provided an additional eight channels for an additional monthly charge of $2.50. In 1987 the price

CableVision stated its intention to offer between 50 and 55 channels of basic cable service for a monthly fee of $17.00. Premium channels such as HBO, Showtime, The Movie Channel and Cinemax would each be priced at $10.50 a month. Subscribers choosing two or more premium channels were offered monthly discounts and, installation and two additional cable outlets were to be offered at no charge to the subscriber.[60]

In August, 1990 Storer announced that "beginning October 1 it would add at least 25 channels, cut the cost of its basic service, be the exclusive area distributor for TNT and ESPN's pro football coverage and offer the Disney channel free to subscribers of its expanded basic cable package."[61] The company also announced that it would offer an economy package of channels two through thirteen for

---

of basic cable was increased by $.55 a month and by $1.45 a month in 1988.

"Petition to the City Council, City of Montgomery, Alabama," March 20, 1984.

Resolution No. 96-84

Debra Davis, "Cable Customers Reap Rewards From Price War," The Montgomery Advertiser, January 15, 1990, 3a.

Editorial, The Alabama Journal, January 16, 1990, 12a.

Peggy Roberts, "Subscribers would win war over cable television," The Montgomery Advertiser and The Alabama Journal, Business Day, January 29, 1990, 1b and 6b.

[60] Montgomery CableVision franchise application, "Schedule of Rates and Charges of the Applicant".

[61] Rick Harmon, "Storer to add channels, lower prices," The Montgomery Advertiser, August 21, 1990, 1.

$11.95 a month.[62] In May, 1991, Montgomery CableVision announced that it would match Storer's offer of free Disney.[63]

As of late February, 1993, Storer was offering 52 channels of basic cable service, including Disney for $16.95 a month. The company had announced that it was raising the cost of HBO by $.45 per month. Montgomery CableVision was offering 58 channels of basic cable service, including Disney I and II for $16.95 a month.[64]

Table 1 compares national basic cable rates to those in Montgomery before and after entry by Montgomery CableVision.

---

[62] Ibid.

[63] Rick Harmon, "Cable Wars: Customers already the real winners," The Montgomery Advertiser, May 3, 1991, 1d and 4d.

[64] Storer continued to offer an economy basic package of channels two through thirteen for $11.95 per month. The company charges $2.50 per month for each additional outlet. Installation is free in those sections of Montgomery where the company competes with Montgomery CableVision.

Montgomery CableVision offers free installation and continues to provide two additional outlets at no charge to the subscriber.

The company also offers a number of packages of premium services beginning at $12.95 a month. For example, package #1 contains Showtime, Showtime 2, Flix and The Movie Channel.

Rick Harmon, "Sparring cable companies good news for subscribers," The Montgomery Advertiser, February 26, 1993, 9c.

Storer Cable Subscriber Rate Card
Montgomery CableVision Subscriber Rate Card

Table 1
Basic Cable Rates[65] U.S. vs. Montgomery

Year-End	U.S. Average	Montgomery
1986	$11.09	$12.00
1987	$13.27	$14.95
1988	$14.45	$15.50
1989	$15.97	$16.95
*1990	$15.97	$18.25
**1990	$17.58	$16.95
1991	$17.75	$16.95

*January, 1990
**December, 1990

While there hasn't been an all-out price war between Storer and Montgomery CableVision, there has been hand-to-hand combat. In its first few months in operation, Montgomery CableVision ran advertising campaigns in newspapers and on television. A series of newspaper ads, entitled "Channel Check" asked potential subscribers to check their programming preferences on a ballot. The ballot included space for people to write their names, addresses and telephone numbers. Those completing the ballot were then registered to win a 25 inch color television set.

---

[65] Cable Television Developments, (Washington: National Cable Television Association, October, 1992), 6-a.

The television campaign announced that Montgomery CableVision had begun to install subscribers and that service was available. Both campaigns were extremely successful, perhaps too much so. According to Rice, because the reach of the television ads was so wide, the company received calls from neighboring communities as well as from parts of Montgomery that the company wouldn't build for years. The flurry of calls overtaxed Montgomery CableVision's telephone system, frustrated potential subscribers who lived in areas where competing service was not yet available and resulted in requests for installation that far outpaced the company's ability to accommodate them.

Since then, the company has scaled back on its advertising, focusing instead on door-to-door sales and marketing the service to bulk customers such as Alabama State University and large apartment complexes. Prior to Montgomery CableVision's entry, Storer had curtailed its door-to-door sales and was concentrating its efforts on packaging and selling its pay services. Once Montgomery CableVision began selling its service door-to-door, Storer contracted with an outside firm and reinstituted its direct sales approach.

Rice stated that shortly after his company began installing customers, Storer started offering those customers a month of free cable to have Storer reinstalled. Then the incumbent increased the offer to two months of free cable. "Now the standing offer is about four months of free cable either to switch back to Storer or to not switch to us."[66] The result, Rice says, has been that a customer will switch back to Storer for the length of the free offer and at the end of that time, many switch back to Montgomery CableVision.

The company's direct sales manager, Nick Neely stated that Montgomery CableVision instituted a reconnection charge of $19.95 to discourage people from disconnecting and connecting to Storer and then switching back.[67] Neely also noted that the loss to Storer hadn't been that great. "It's not enough for us to counter- offer."[68]

Both companies also aggressively market their pay services. While both offer those services on a la carte basis, Montgomery CableVision focuses its efforts on selling subscribers packages of premium channels. The company has four such packages which range in price from $29.90 per month for all basic channels plus Showtime, Showtime 2, Flix

---

[66] Rice interview.

[67] Nick Neely, Direct Sales Manager, Montgomery CableVision and Entertainment, Inc., interview by author, tape recording, Montgomery, Alabama, February 23, 1993.

[68] Ibid.

It should be noted that Storer's offer to its customers is only available in those areas where it competes with Montgomery CableVision. Although this would appear to be in violation of the uniform pricing ordinance, Montgomery CableVision has not yet seen fit to make an issue of it in the courts.

and the Movie Channel to $47.90 per month for all of the above plus HBO, Cinemax and Encore. Rice noted that because Storer had long emphasized its premium channels, it was relatively easy for Montgomery CableVision to sell subscribers pay as well as basic services. He reported a pay-to-basic ratio of 94 percent, significantly above the national average of 78 percent.[69] Surprisingly, given the company's marketing efforts, Gilbert reported that Storer's pay-to-basic ratio was about 70 percent, significantly below the national average.[70]

Perhaps because they realize that there is just so much that can be done in terms of price competition, Storer and Montgomery CableVision concentrate their efforts on differentiating their products in terms of customer service and channel offerings.

Customer Service

Montgomery City Ordinance No. 50-76 as amended contains a section which outlines the service standards that a franchised cable operator is required to maintain. Specifically, in part, a "Grantee shall:

---

[69] Rush Rice, President, Montgomery CableVision and Entertainment, Inc., telephone interview by author, Michigan, April 27, 1993.

Cable Television Developments, 8-a.

[70] Jack Gilbert, General Manager, Storer Cable, telephone interview by author, April 27, 1993.

1.) Maintain all parts of its system in good condition...
2.) Maintain a conveniently-located business office which...shall be open during all usual business hours, and be so operated that complaints and request for repairs or adjustments may be received by telephone at any time when any television signals are being broadcast.
3.) Dispatch personnel to investigate all service complaints and equipment malfunctions within 24 hours and strive to resolve such complaints as promptly as possible. . .
4.) Maintain a complete list of all complaints received and the measures taken to resolve them in form to be approved by Agency (the City).[71]

Despite the presence of the ordinance, Storer's record of customer service was less than exemplary. In a July, 1982 letter filed with the city clerk's office, a subscriber stated that a recent letter that he had sent to Storer asking "who do I complain to about Storer Cable TV?" received no response.[72] In a similar letter filed in August, 1982, a subscriber noted, "for two days I have tried to call your (Storer's) sales office . . . I have been

---

[71] Ordinance No. 50-76, Section 9. Service Standards - Business Office-Resolution of Complaints.

Additionally, both Storer and Montgomery CableVision subscribe to the National Cable Television Association's recommended standards for customer service. The latter standards are similar to those contained in the ordinance but also require that in most cases "telephone answer time by a customer service representative, including wait time, and the time required to transfer the call, not exceed 30 seconds." it is also recommended that "standard installations . . . be performed within seven business days after an order has been placed."

The Recommended Standards for Customer Service As Adopted by the NCTA Board of Directors on February 14, 1990, (Washington: National Cable Television Association, July 1991).

[72] Letter from Charles Griffith, July 13, 1982.

unable to get any response to those telephone calls."[73] In connection with a proposed 1984 rate increase that was to be voted on by city council, a subscriber noted, "I really do not object to the rate increase. IF I COULD RECEIVE THE SERVICE FOR WHICH I AM WILLING TO PAY. (emphasis provided)" The subscriber then discussed how she had been trying for two years to get a second outlet installed and had been given the "runaround."[74] Lack of good program selection, trouble getting complaints answered and difficulty getting through to Storer customer service representatives during periods of outage were cited by those who wrote letters to city council as reasons to encourage Montgomery CableVision to compete with Storer. While a few letters filed over a period of several years are not sufficient to establish that Storer's service was inferior, additional evidence does exist.

In the spring of 1990, after it had been granted a franchise, Montgomery CableVision commissioned a study "to assess the cable television market in Montgomery, Alabama."[75] A telephone survey of 697 randomly selected heads-of-households was conducted. Of the 697 initial

---

[73] Letter addressed to Storer from Robert B. Stewart of Jones, Murray, Stewart and Yarbrough, Attorneys at Law, August 11, 1982.

[74] Letter from Mrs. Arthur Frederick Schnapf to City Clerk, March 24, 1984.

[75] A Marketing Study for Montgomery CableVision and Entertainment, Inc., Southeast Research, May 31, 1990, 1.

participants, 65 percent were Storer Cable subscribers and their responses formed the basis of the final report.[76] Among other things, respondents were asked to rate the quality of service they received from Storer Cable.[77] Overall subscribers were found to be only moderately satisfied with the service they were receiving from Storer. In response to a question on the technical quality of Storer's service, 63.1 percent said they had experienced a problem with their reception "during the past month or so."[78]

While one could argue that because the study was commissioned by Montgomery CableVision, its results may not be completely objective, there is other evidence to support the perception that Storer's service was substandard. For example, in October, 1990, Gilbert conceded that there were service outages and that these outages would continue

---

[76] Ibid., 3.

[77] Ibid., 11, Table 2.
The question read: "I would like for you to rate the quality of service which you receive from Storer Cable Television in Montgomery. I'm going to read you a list of items concerning your dealings with Storer Cable Television, and as I read the list, please rate your level of satisfaction with Storer Cable as either very satisfied, somewhat satisfied, somewhat dissatisfied or very dissatisfied. Okay?" The items on which the subscriber was to rate Storer were "dealings with customer service personnel at their office," "optional movie channels they have to select from," "ability to get in touch with Storer's office people by phone," and "the monthly cost of you Storer cable subscription."

[78] Ibid., 14, Table 7.

through the end of 1991. He noted that the outages were a result of Storer's efforts to rebuild the system. He also conceded that "customers are often unable to get through when they call to complain about the outages."[79]

Additional evidence of the quality of Storer's service can be found in the remarks of McBride and Merelman. McBride stated,

> There had been a growing . . . I think general feeling that Storer cable had just been indifferent. There was no competition. There was no motivation for them to strive to improve and reach a level of excellence and deliver their services. I think they got fat and sloppy. There's nothing worse than developing an arrogance born out of indifference.[80]

Merelman noted, "when Storer was the sole provider . . . the service was incredibly shoddy. There were huge delays in getting your installation, huge delays in repairs. Cable would go on the fritz regularly."[81] Even so, Gilbert noted that there hadn't been outcries in the paper or from the public for better service prior to MCE's announcement of its intent to enter the market.

Although there may not have been a public outcry, there was enough dissatisfaction with Storer's service to suggest that this was a dimension on which Montgomery CableVision could compete. Recognizing this, from the outset the

---

[79] Jack Gilbert, quoted in Stephen Merelman, "Storer manager says outages will continue," The Alabama Journal, October 25, 1990, 2a.

[80] McBride interview.

[81] Merelman interview.

company strove to provide superior service. According to Rice, our employees "are grilled on the service aspect of our business. The customer is obviously worth a lot more to us than he is to them. We offer convenient installation. We're there when you need and want us."[82]

Neely reiterated Rice's position on the importance of customer service. "The attitude of the customer service representative is key. We try to catch the phone at the second ring. We don't leave a person holding if a question needs to be referred. . . If (the) price is competitive, the bottom line is service. Service makes the difference."[83]

Initially as a result of the competition from Montgomery CableVision, Storer's service seemed to improve. Neely said that a number of Storer subscribers declined to switch to Montgomery CableVision because they were being treated well by Storer. "'They come out and service us when we have outages, they give us all these free preview channels and they've reduced the price.'"[84]

James Buckalew, Executive Assistant to the Mayor, stated, "I think the competition has driven Storer to do some things with their basic service and some of the additional programs they offer. I think it's helped people

---

[82] Rice, Montgomery interview.

[83] Neely interview.

[84] Ibid.

have more faith in Storer, also."[85] However, Neely found that after a time Storer's customer service had regressed. In relating some of the reasons that customers who decided to remain with Storer in the beginning were starting to switch over to Montgomery CableVision, Neely said that he had been told, "Storer is lousy. The interruptions are still there. They're no longer as nice."[86]

When asked why <u>he</u> thought Storer was regressing in terms of customer service, Neely replied, "Maybe it's because their Customer Service Representatives get so many complaints. Maybe they feel enough's enough. Whenever it rains, Storer goes out."[87]

After two and a half years in the market, Montgomery CableVision was continuing to take subscribers away from Storer in the areas of Montgomery where the two compete.

---

[85] James Buckalew, Executive Assistant to the Mayor, interview by author, tape recording, Montgomery, Alabama, February 25, 1993.

[86] Neely interview.

[87] Neely interview.

According to Neely, Rice and Blount, when Storer added new channels to its system to compete with Montgomery CableVision, they did so without respacing amplifiers. As a result the system is overloaded with reception on channels above 35 snowy. The Storer system apparently continued to be subject to outages.

Although Storer's problems with outages may have been overstated by Montgomery CableVision, Gilbert acknowledged that, "you're subject to the elements. The best thing you can do is have a good staff standing by, ready to roll out there and get it fixed as quickly as possible. Which we're all doing."

Gilbert, Montgomery interview.

Program Offerings

In Montgomery, product differentiation with respect to programming takes place in terms of both the number and types of channels offered. In his study of franchise bidding, Zupan detailed the nonprice concessions that were frequently required by franchisors. Those concessions include free hook-ups for public institutions, institutional networks, and a combination of public, educational, and government channels. According to Mr. Gilbert, in terms of the demands that the city made with respect to access, "Montgomery was not a problem."[88] In its original franchise application, Storer promised to provide one local public access channel. However, as is the case in many communities, the channel was underutilized by the public and has since been transformed into a local origination channel. Gilbert is proud of Storer's record of service in this area. The company produces a controversial but popular local talk show, offers a full range of local educational programs, and provides free cable to city hall, local public schools and other public buildings.[89]

---

[88] Gilbert, Montgomery interview.

[89] Gilbert, Montgomery interview.
John Gerome, "Mayor's wish to see Iron Bowl, Peter Pan at same time brings cable TV to ASF", The Alabama Journal, December 4, 1991, 1a.
Rick Harmon, "Sparring cable companies good news for subscribers," The Montgomery Advertiser, February 26, 1993, 18c.

In its franchise application, Montgomery CableVision outlined its intention to set aside four to six local origination channels to provide "live and taped coverage of local college, high school, junior high and recreational sporting events."[90] Subsequently, the company discovered that there wasn't sufficient interest in this type of programming to justify its expense.[91] As a result, Montgomery CableVision has chosen not to compete with Storer on local origination.

In its application, Montgomery CableVision also detailed its plan to construct a 550 megahertz fiber optic system that would give the company the capacity to expand up to 77 channels. Although the company decided not to deploy fiber, the system is capable of transmitting 77 channels. Currently approximately 70 channels are in use.[92] The excess capacity gives Montgomery CableVision the flexibility of adding new channels as they become available, offering

---

[90] Montgomery CableVision franchise application, Section 18(1)(c).

[91] For instance, the market study done for Montgomery CableVision by Southeast Research Associates found that only 22.8 percent of those respondents who indicated that they'd be likely to switch from Storer had an interest in locally originated programming.

[92] Storer has about 60 channels, but according to Neely, Rice, and Blount, reception of channels above 35 is poor.

more Pay-Per-View choices, and multiplexing others such as Disney and Showtime.[93]

Storer has the edge in cable radio and in being the exclusive Montgomery outlet for TNT and ESPN's Sunday Night NFL package. It offers DMX (Digital Music Express), a system which provides more than 30 channels of uninterrupted CD-quality music for $9.95 a month. Alternatively, for a one-time charge, a subscriber may choose Superaudio, a nine-channel cable radio service.

Neely believes that with DMX and TNT Storer has been able to keep many of the subscribers that would otherwise have switched to Montgomery CableVision. The latter is hoping to add DMX in the near future and TNT when the provisions of the Cable Act of 1992 pertaining to exclusive contracts go into effect. For the time being, Montgomery CableVision emphasizes its ability to offer what Storer cannot because of space limitations. These offerings include additional premium channels, local weather radar and a 24-hour sports tracking service.

Impact of Competition in Montgomery

The industrial organization model states that competition results in lower prices, more choices and better service than one would find in a noncompetitive market.

---

[93] Both Disney and Showtime, as well as other programmers, offer second channels with alternately scheduled programming.

Much of this is true with respect to cable television delivery in Montgomery, Alabama.

In December, 1990, one month prior to Montgomery CableVision's announcement of its intent to enter the market, Storer Cable announced that it was raising the price of basic cable service from $16.95 to $18.25 per month. At the time, 29 channels were included in the basic package. Once a competing cable service became available, Storer dropped its price back to $16.95 per month, added more than 20 channels of programming and began to offer the Disney channel free to subscribers of its expanded basic package. Previously Disney had been priced at $10 per month. Montgomery CableVision offers a comparable package for the same price. At $16.95 per month for 52 channels, $.33 per channel, basic cable service in Montgomery is significantly less expensive than the national average.[94] According to the National Cable Television Association, as of October, 1992, the average U. S. cable subscriber pays $17.75 per month for 38 channels, or $.47 per channel.

Although there was no public outcry about Storer's service, there was some evidence that it was less than exemplary. For example, over the course of several years, a number of letters complaining about Storer's service were

---

[94] As of February, 1993, Storer was providing 52 channels of basic service for $16.95 a month, $.33 per channel. Montgomery CableVision offered 58 channels for the same monthly fee. The latter breaks down to $.29 per channel.

filed in the city clerk's office. Those complaints focused on the difficulty subscribers had in having cable problems resolved and reaching Storer customer service representatives during system outages. From the outset, Montgomery CableVision strove to avoid the problems outlined above. There is the perception that competition resulted in an improvement in Storer's customer service and in better overall service for Montgomery cable subscribers.[95]

As of February, 1993 a competitive equilibrium appears to have been reached, at least in the short-run in Montgomery. What will happen in the long-run has yet to be determined. Before the company actually entered the market there were charges that the principals involved in Montgomery CableVision were greenmailers. Rice countered this by pointing to a provision in the Montgomery cable ordinance which prevents the resale of the franchise without the consent of city council. One could easily argue however, that given Blount's political clout, obtaining that consent would probably not be a problem in the event a buyout offer was made. For the time being, it seems that Montgomery CableVision fully intends to continue to compete with Storer.

When asked if cable television delivery in local markets was a natural monopoly, Rice replied

---

[95] Buckalew and Neely interviews.

> It has some characteristics of a natural monopoly but the primary flaw is that one definition of natural monopoly is that the natural monopolist is the lowest cost provider. . .Someone with capital can build a cable system for $500 a sub and they're competing against an mso with a cost per sub of $2800 and a fully depreciated plant that needs to be replaced- My question is who is the low cost provider?[96]

He also noted that contrary to popular belief, "building a cable system is not like building a factory. A cable system can be built a mile at a time. . . Cable is very inexpensive relative to the revenue you can generate. There is no financial barrier to entry."[97] As might be expected, Gilbert disagrees.

> I really think cable itself might be [a natural monopoly]. Why would I as a consumer want to put up with the aggravation of having two cable companies? We don't have two separate sets of power lines, of gas line, of phone lines. Why should we have two separate sets of cable lines when, bottom line, you're not going to be offering them anything different over those two lines?[98]

Nonetheless, Gilbert believes that for the foreseeable future cable will face some competition. That competition will be shaped in large measure by who the players are. Gilbert anticipates that one source of competition will come from cities. In Montgomery if the players continue to be Storer and Montgomery CableVision, Gilbert expects prices to start to rise. He also believes that in the long-run, competition will be affected by the players' ability to

---

[96] Rice, Montgomery interview.

[97] Ibid.

[98] Gilbert, Montgomery interview.

reinvest in their plants and deploy new technologies such as digital compression as they become available. In this respect, Storer with the resources of TCI to support it, will have a significant edge over Montgomery CableVision. If however, a telephone company chose to and was allowed to purchase Montgomery CableVision, competition in Montgomery would take on a whole new complexion.

Chapter IX
PARAGOULD

Market Characteristics

Paragould, Arkansas a city of 18,500 people has a few of the market characteristics one would expect to find in a situation where there is competition in cable television delivery. First, although population density is well-below the threshold typically thought necessary for competition to be feasible, Paragould has an exceptionally high basic cable penetration.[1]2 In a 1986 feasibility study done for the City of Paragould, consultants CTIC Associates noted that over 80 percent of the homes in Paragould purchased cable service.[2] This high penetration is due primarily to the

[1] With 6800 total homes passed and 121 plant miles, the population density in Paragould is approximately 56 homes per mile.

Richard Hale, General Manager, Paragould Cablevision, Inc., interview by author, tape recording, Paragould, Arkansas, February 18, 1993.

City Cable reports 145 miles of plant and 8000 homes passed; also a population density of 56 homes per mile.

Jack Brinkley, Cable Superintendent, Paragould City Light, Water and Cable, telephone interview by author, April 1, 1993.

[2] CTIC Associates, Municipal Ownership of a Cable Television System in Paragould, Arkansas: A Feasibility Study, (Alexandria: Cable Television Information Center, 1986), II-2.

February 1993 estimates place basic cable penetration at between 90 to 95 percent of homes passed.

lack of quality over-the-air reception of broadcast television signals. Without cable or a sizeable antenna, residents of Paragould are only able to receive KAIT, the ABC affiliate from Jonesboro and KTEJ, a PBS station, also located in Jonesboro, a city about 20 miles away. There are no broadcast television stations licensed to Paragould. The feasibility study also noted that there was an upside potential in pay subscriptions because fewer than 50 percent of basic customers also chose a premium service.[3] Second, the cost of cabling the community is about average. The CTIC study estimated that 94 percent of the plant would be aerial at a cost of $13,500 per mile, including make-ready, with only 6 percent of the system underground at a cost of $18,000 per mile.[4] Third, the median household income in Arkansas in 1989 was $21,147, almost $10,000 lower than the national average of $30,056.[5] Fourth, the fact that the

---

Jack Brinkley, interview by author, tape recording, Paragould, Arkansas, February 17, 1993.
Hale interview.

[3] CTIC study, op. cit. At the time of the study, 83.5 percent of all U.S. basic cable households also subscribed to a premium service.
Cable Television Developments, 3-a.

[4] According to Brinkley, CTIC's estimates with respect to the cost of cabling the community was about right and was based on the average industry costs.
Brinkley, telephone interview.

[5] 1990 Census of Population and Housing, Summary Social, Economic and Housing Characteristics, U.S., November, 1992.
In 1988 the median household income in Greene County, was 1.4 percent higher than the average median household income for the state of Arkansas.

incumbent system was not locally owned contributed to the feasibility of competition in Paragould.[6]

Political Factors

In an August, 1990 presentation to the Alabama Cable Television Association, Bruce P. Ely noted

> some municipal officials are frustrated with deregulation and with their attendant loss of control over the extent and quality of cable service. Authorizing an overbuild can appear to offer competitive surrogates for regulation and incidentally punish the incumbent (or the industry) for going over the city's head to Washington or thumbing its nose at the city.[7]

Although Ely was referring to overbuilds in general, the scenario he outlined describes to a "t" the situation in Paragould, Arkansas. Although Paragould has a few of the market characteristics one would expect to find in a competitive situation, it was the city's troubled relationship with its incumbent operator that led to the decision to enter the cable television business. That entry became an emotionally charged issue involving two referenda, numerous public hearings, legislative action, letters-to-the-editor exchanges in the local newspaper and three lawsuits.

Paragould, Arkansas Chamber of Commerce

[6] Larry Watson, Manager, Paragould City Light and Water, interview by author, tape recording, Paragould, Arkansas, February 17, 1993.

[7] Bruce P. Ely, "Defending Against Overbuilds," Alabama Cable Television Association, Annual Meeting, August 23, 1990.

The conflict began in March, 1984 when Adams-Russell (A-R), then the parent of Paragould Cablevision, Inc. (PCI), refused to provide the Paragould City Council with the financial documents the city felt were necessary to support the company's request for a rate increase.

Prior to 1983, the City of Paragould had an old franchise agreement with a local entrepreneur who later sold his system to Adams-Russell. The original franchise expired in 1983.[8] That year the mayor appointed a three person committee to negotiate a new cable franchise agreement. Phil Herget, one of the members of the committee, has said, "I didn't know anything about cable t.v. What they (A-R) did was to send us two or three samples of franchises they had in other places. I used that as the basis."[9]

When asked if there was any bidding for the franchise, Herget, Watson and Donis Hamilton, Counsel for City Light and Water said there was not. Hamilton noted, "Request for Proposals (RFPs) might sound good if you were in a market like Detroit or in other large cities with a lucrative market but, there has never anywhere in the state of Arkansas to my knowledge <u>ever</u> been bidding for

---

[8] Phil Herget, former member of the Paragould Cable Committee, interview by author, tape recording, Paragould, Arkansas, February 19, 1993.

[9] Ibid.

franchises.[10] In fact, according to Watson, the city let Adams-Russell's attorneys write the franchise.

The fifteen year franchise went into effect on December 10, 1983 and is explicitly non-exclusive.[11] In part, the agreement stipulated the following:

1.) that the franchisee "will first notify the City and offer its proposed modification to the Agreement to cover such additional services and activities, and the proposed modification shall be subject to negotiation" if the franchisee decided to undertake other income producing activities, including local advertising.[12]
2.) that the franchisee would provide at least eleven channels of basic programming, including "a station that broadcasts the Cardinal baseball games; . . . and one or more Little Rock stations including one that broadcasts the (University of Arkansas) Razorback football and basketball games when they are televised."[13]
3.) that the franchisee would enter into discussion with City representatives at the City's request concerning any proposed rate changes and "when requested in writing . . . to furnish reasonable details which Grantee relies upon to justify such changes."[14]
4.) that the franchisee pay a franchise fee of three percent of gross receipts from the "sale of cable t.v. service (basic and all pay)".[15]

---

[10] Donis Hamilton, Counsel for City Light and Water, interview by author, tape recording, Paragould, Arkansas, February 17, 1993.

[11] Resolution No. 83-22, RESOLUTION AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE CERTAIN CABLE TV FRANCHISE AGREEMENT WITH PARAGOULD CABLEVISION, INC., November 28, 1983, 1.1 and 2.1.

[12] Ibid., 5.0.

[13] Ibid., 5.1.

[14] Ibid., 5.5.

[15] Ibid., 5.10.

All four of these stipulations subsequently became bones of contention between the parties. On March 17, 1984, Paragould Cablevision requested an eleven percent rate increase of $1 for basic service. Six days later, Alderman Don Perkey, acting as representative of the city's cable committee, asked for information concerning the financial reasons for the request to raise the basic rate from $9 to $10. It wasn't until five months later that Perkey received a reply from Adams-Russell. The letter did not include the information the city wanted, namely accounting records for 1983 and 1984.[16]

With the passage of the Cable Act of 1984, which allowed cable operators to increase rates by five percent a year in 1984 and 1985, PCI implemented a $.45 increase in December, 1984 and made plans to implement an additional $.47 increase in January, 1985.

Between September, 1984 and October, 1985 there was a series of correspondence between representatives of the city and A-R. The items discussed included the calculation of franchise fees, justification of rate increases, deletion of Razorback games, and the potential substitution of a Little

---

[16] Paragould City Light and Water Commission, "Paragould's Five-Year Cable Conflict", unpublished paper, 1992.

Rock station which carried those games for a duplicative ABC affiliate from Memphis, Tennessee.[17]

In a March 6, 1985 letter to East Arkansas Cablevision of Jonesboro, Perkey advised them that Paragould's franchise is non-exclusive, that PCI was not living up to its agreement and asked whether they would be interested in overbuilding the city. In April, East Arkansas Cablevision responded saying they were not interested in the overbuild because it was not practical.[18]

In October, 1985, Mayor Charles Partlow wrote a letter to the Cable Television Information Center in Alexandria, Virginia outlining the disputes and inquiring about the availability of a person who could represent the city in an arbitration. A November, 1985 meeting between representatives of the city and Adams-Russell became quite acrimonious. According to Herget, none of the disputed issues were settled and when asked point blank whether the city would be furnished a certified copy of the cable company's balance sheet and profit and loss statement to support its increased charges, an Adams-Russell vice president said it would not. In apparent frustration, the mayor said that from his understanding of the 1984 Cable Act, as of December, 1986 cable companies could do as they

---

[17] Herget, "Cable Television Chronology", unpublished document, 1993.

[18] Ibid.

pleased and the only recourse a city might have, especially from 1987 on, would be to operate its own cable television system. The mayor also noted that when his comment to this effect appeared in the newspaper, he received more public support than he had on any other single issue since he had been in office.[19] Recalling the November meeting, Partlow was later quoted as saying, "They just plainly told us in a polite way to go to hell, that they were going to be deregulated in 1987 and there was nothing we could do about it."[20]

In discussing the history of the city's conflict with A-R, Herget notes

> We gave them an exceedingly liberal franchise agreement. They immediately started asking for increases and we kept putting them off, asking them for justification. The justification for the increase was very vague. We tried to make our agreement fair for the city and the cable company and they took advantage of every little thing we had in there.[21]

Following the November, 1985 meeting, the city council asked the Paragould City Light and Water Commission (CLW) to

---

[19] Ibid.

Partlow was first elected Mayor of Paragould in 1978.

According to Herget, in addition to the disputes outlined above, there was subscriber dissatisfaction with PCI stemming from the company's offer of 13 months of service for a lump sum payment of a year's subscription and the subsequent billing of those subscribers for rate changes that had occurred during the prepaid period.

[20] Partlow quoted in Stan Gray, "Paragould Takes on Cable Co. at Polls," The Jonesboro Sun, June 6, 1986, 1A.

[21] Herget interview.

pursue a feasibility study on a municipal system.[22] The study concluded that a municipal system which would operate in competition with PCI was feasible if the city could capture 40 percent of the local market or 50 percent of its competitor's customers.[23] According to newspaper reports,

> When the results of the feasibility study were announced, Adams-Russell asked the city to delay acting on the proposed municipal system for 60 days. Aldermen refused. Three days later Adams-Russell announced the appointment of Bill Little as local manager, began admitting the company had made mistakes, announced plans to pacify the city and customers and again requested a delay of action. Again aldermen refused.[24]

At a March, 1986 city council meeting, CLW's attorney noted that before the city could enter the cable business, an ordinance would have to be written and public hearings held. He further cautioned that in his research he had found nothing in Arkansas law concerning municipal ownership of a cable television system. Additionally, if the city chose to finance the project with bonds, that issue would

---

[22] The Paragould Light and Water Commission (CLW) is an entity created by the City of Paragould. The city had charged CLW with the responsibility of operating, controlling and supervising its municipally-owned light, water and sewer plants.

[23] CTIC, op. cit.
Paragould City Council Meeting Minutes, March 10, 1986.

[24] Stan Gray, "Paragould Takes on Cable Company at Polls," The Jonesboro Sun, June 6, 1986, 1.
Among the problems the city had with A-R was the company's failure to appoint a local manager upon the retirement of the system's previous manager in 1984.

have to be put before the voters. After a lengthy discussion, a motion to hold a public hearing on April 14, 1986 was carried by a vote of seven to zero.[25]

At the public hearing, PCI unveiled plans for additional channels, lower prices, and a two-phase reconstruction project. Nevertheless, the hearing resulted in the passage of Resolution No. 86-3, RESOLUTION TO REFER A PROPOSED ORDINANCE TO THE ELECTORS OF THE CITY OF PARAGOULD, ARKANSAS FOR ADOPTION OR REJECTION AND FOR OTHER PURPOSES--RESOLUTION #86-3--CABLE TELEVISION. After a brief discussion, city council members set June 17, 1986 as the date for the election.[26] The full text of the ballot question is presented in Appendix C.

PCI mounted a campaign to defeat the measure. The campaign included newspaper ads and television and radio spots as well as a direct mail appeal. The company's position was that the CTIC feasibility study underestimated costs and the city

> misled the voters by not presenting a true picture of the construction and operating costs of a city-owned cable system. . . The most significant piece of financial data that has been totally ignored by the CTIC study is the interest on the bond issue that will be needed to finance construction.[27]

---

[25] City Council Minutes, March 10, 1986.

[26] Paragould City Council Meeting Minutes, April 14, 1986. Sylvia Jamison, "Voters to decide on cable Tuesday," The Paragould Daily Press, June 13, 1986, 1.

[27] Bill Little, PCI manager quoted in "Cable Firm: City would lose money," The Paragould Daily Press, June 6, 1986, 1.

Despite Cablevision's attempts to defeat it, the proposed ordinance was passed by wide margin. Of 1965 voters, 1553 voted for the measure, 412 voted against it.[28] At the time, the city was proposing to construct a $2.7 million system and offering a 40-channel basic service for $9.95 a month. In June, 1986 PCI's basic service included 18 channels for $11 a month.[29] In an August, 1986 survey of CLW customers, eighty percent of those responding said they would be willing to switch to a city-owned system.[30]

In a November, 1986 letter to Partlow and members of Paragould City Council, Adams-Russell vice president, Mike Zimmer, expressed surprise that the city was "planning to construct and operate a cable television system in the

---

[28] Jamison, "Paragould voters back city cable tv system," The Paragould Daily Press, June 18, 1986, 1.

Paragould had 7000 registered voters. PCI's response was because 5000 people didn't vote, they must be fairly satisfied with the status quo.

[29] Ibid.

[30] Paragould Light and Water Commission Survey, August, 1986.

The survey stated that the CLW was proposing to offer a 40 channel basic cable service for $9.95 a month and asked customers the following questions:

1.) Will you be willing to change over or subscribe to you locally owned and controlled cable system?

________Yes ________No

2.) Do you subscribe to cable now?

________Yes ________No

The survey was sent to 6300 people. Almost 80 (79.8) percent responded. Of those, eighty percent, 4021 people answered "yes" to both questions.

relatively near future."[31] Zimmer also noted that the numerous issues concerning the feasibility of a city-owned and operated system had either not been considered or were ignored. Zimmer wrote,

> the continued promotion by the City of "forty channels at $9.95" is entirely inconsistent with the design and economics contemplated in the CTIC study. . . Such a plan is not commercially sound unless the City intends to operate its system at a loss.[32]

While admitting that Adams-Russell understood that in the fall of 1985, the City was left with the view "that our company was not addressing your concerns in a satisfactory manner", Zimmer noted that since then he personally had spent "a substantial amount of time and effort in Paragould attempting to determine exactly what concerns existed in the community."[33] From A-R's point of view, the company had begun to address the city's concerns by rebuilding and upgrading the system "in order to provide more programming at a lower rate", improving customer service, hiring a local manager, and eliminating deposits on converter boxes.

Through all of 1987 and the winter of 1988, the issue of a municipal system remained on the drawing board in Paragould, but the hubbub appeared to have subsided and

---

[31] Mike, Zimmer, " Letter to Mayor Partlow and Members of Paragould City Council," November 3, 1986.

[32] Ibid.

[33] Ibid.

financing questions remained.[34] While city council passed a resolution expressing council's desire to have the CLW Commission continue to pursue the issue of a municipally-owned and operated system in the spring of 1987,[35] by December council members decided they wanted more time to consider the feasibility of a municipal system. According to reports in The Paragould Daily Press, Alderman Tim Woolridge said that since PCI had hired a local manager, added channels to its basic and tiered services, had lowered some prices and begun upgrading the system, the city had accomplished its objective of getting better cable service and subscribers were satisfied.[36]

Then in late April, 1988 Partlow received a letter from Bill Little, PCI's manager announcing a rate increase and a retiering of services effective June 1.[37] Partlow

---

[34] In March, 1987, the Arkansas legislature passed Senate Bill 403, AN ACT TO AUTHORIZE CITIES AND TOWNS TO OWN AND OPERATE TELEVISION SIGNAL DISTRIBUTION SYSTEMS; AND FOR OTHER PURPOSES. The full text of the act is presented in Appendix D.

[35] Resolution No. 87-5, A RESOLUTION TO EXPRESS THE DESIRE OF THE CITY COUNCIL OF THE CITY OF PARAGOULD, ARKANSAS, THAT THE PARAGOULD CITY LIGHT AND WATER COMMISSION PURSUE A PROGRAM TO ESTABLISH A CITY-OWNED CABLE TELEVISION FACILITY. Paragould City Council Meeting Minutes, May 26, 1987

[36] Jamison, "City Council delays decision on building a cable TV System," The Paragould Daily Press, December 15, 1987, 1.

[37] Correspondence from Bill Little, Manager, Paragould Cablevision, Inc. to Charles Partlow, Mayor, Paragould, Arkansas, April 29, 1988.

responded to the correspondence from Little by reiterating the city's request for certified financial statements and position on rate increases and asking the city attorney to "'draw up the necessary papers to put the city in the cable business.'"[38]

While it may be difficult to point to any single event as the catalyst in the city's decision to enter the cable television business, PCI's handling of its June, 1988 rate increase and retiering of services was certainly a major contributing factor. It was a source of confusion and according to Watson, "That one, (the retiering) pretty much broke the people's backs."[39] A 1989 article in The Jonesboro Sun noted that "the issue of city-owned cable had

---

The correspondence outlined PCI's plans to move four networks, including the station carrying the St. Louis Cardinals baseball games, from a super tier to basic and increasing the price of basic by $2 per month, from $11 to $13. However, any new subscribers would be required to buy the super tier, retitled, Family Cable at a rate of $16 a month, an increase of $1 a month.

Olivier Uyttebrouck, "Municipal cable system back in picture," The Paragould Daily Press, May 24, 1988, 1.

[38] Uyttebrouck, op. cit.

[39] Watson interview. Watson also stated that when PCI decided to bring the Cardinals' games in, in response to previous complaints, the company put the games on its second tier. "So, now you had to buy this tier to get the Cardinals. That made the people mad but, they went ahead and got the second tier. After PCI got about 2600 people signed up on the second tier, they said, okay, we're doing away with that but, if you're already paying the higher tier, you can't go back to basic."

all but died until an increase in basic cable rates went into effect in the spring of 1988."[40]

In early May, Partlow told the press, "'the fact that we need to live with is they're going to raise the rate when they want to raise them.'"[41] Over the next few weeks, the letters-to-the-editor column in The Paragould Daily Press featured correspondence from PCI subscribers complaining about the rate hike and retiering and urging the city to "stop dragging its feet on its plan to build a system."[42]

Adding further fuel to the fire was a letter the Partlow received from Elizabeth Losinski, Cablevision Systems, Inc.'s Director of Regulatory Affairs. The letter was read at the city council's June 6, 1988 meeting during the discussion of a resolution directing CLW to proceed with its plans for a municipal cable system.[43] In the letter

---

[40] Stan Gray, "Paragould voters to decide cable question," The Jonesboro Sun, October 29, 1989, 1a and 2a.

[41] Olivier Uyttebrouck, "Mayor criticizes cable tv rate hike," The Paragould Daily Press, May 10, 1988, 1.

[42] Lois Thompson, "Cable hike, policy ending basic service grossly unfair," Letter to the editor, The Paragould Daily Press, May 16, 1988. In her letter, Thompson complained that because she was a current PCI subscriber, she wasn't allowed to drop her super tier service and only subscribe to basic.

Similar dissatisfaction was expressed by another PCI subscriber.

Dorece Cupp, "Cablevision Shouldn't make subscribers add unwanted channels," Letter to the editor, The Paragould Daily Press, May 19, 1988.

[43] Paragould City Council Meeting Minutes, June 6, 1988. The resolution under discussion and ultimately adopted was Resolution No. 88-10 RESOLUTION DIRECTING THE PARAGOULD LIGHT AND WATER COMMISSION TO PROCEED WITH THE

Losinski pointed out that the Cable Act of 1984 prohibits the regulation of cable rates, except in areas where there is no "effective competition" as defined by the Federal Communications Commission, outlined the FCC's definition of "effective competition", and listed six broadcast television stations that in Cablevision's view cast a Grade B contour over the community of Paragould. She further stated that because

> Paragould clearly falls under effective competition and the full scope of deregulation. . . the "reasonableness" of our recent rate increase is not subject to regulatory review by the City of Paragould . . . we are not obligated to provide profit and loss statements, nor are we required to negotiate the issue of whether the cable system is making more (or less) than a reasonable profit.[44]

Additionally, Losinski noted that

> we would appreciate the opportunity to meet with you and members of the Council to discuss the Council's decision to explore the construction of a duplicative cable system. . . This raises grave legal and policy concerns.[45]

As part of the discussion, Partlow stated that he felt Cablevision was telling the city that the company was

---

ACQUISITION, CONSTRUCTION, AND MAINTENANCE OF AN EXTENDED COMMUNITY ANTENNA TELEVISION SYSTEM, ALSO KNOWN AS A CABLE TELEVISION SYSTEM FOR THE CITY OF PARAGOULD, ARKANSAS, AND FOR OTHER PURPOSES.

[44] Losinski letter text of which is included in Meeting Minutes, June 6, 1988.
Cablevision Systems, Inc. acquired the incumbent Paragould system from Adams-Russell in January, 1988.

[45] Ibid.

deregulated and that they'd do as they please.[46] In an editorial, <u>The Paragould Daily Press</u>, which had previously argued against the city's entry into the cable business, stated,

> Why PCI continues to act in a way that further fuels public resentment is a mystery. First the company raised rates, then it did away with basic service and told the city to drop dead when asked for an explanation. Perhaps the company was trying to call the city's hand on setting up its own system.[47]

While the <u>Daily Press</u> still objected to the city getting into the cable business, it felt that it was left with no other choice by the 1984 Cable Act and the behavior of Adams-Russell and later Cablevision Systems.

Although the city had the support of the electorate with respect to operating a cable system in competition with PCI, how the construction of the system would be financed remained an open question. In July, 1988, the Arkansas legislature passed a measure which amended the Local Government Bond Act. The amendment added "facilities for the generation, transmission and distribution of television communications" to the list of capital improvements for which municipalities and counties may issue general obligation bonds under Amendment 62 of the state

---

[46] Ibid.

[47] Editorial, "Council's frustrations with cable company's attitude is understandable," <u>The Paragould Daily Press</u>, June 8, 1988.

constitution.[48] The state constitution requires that this type of bond be approved by the electorate prior to issuance because it is secured by an ad valorem tax on real and personal property. The relevant text of the statute is presented in Appendix E.[49]

While the city had not secured funds to finance the construction and operation of its municipally-owned system, Paragould City Council approved a fifteen-year, non-exclusive franchise agreement with CLW effective January 16, 1989. The CLW franchise is in most respects, a duplicate of PCI's franchise agreement with the city and functions in conjunction with the ordinance passed by Paragould's voters in June, 1986.[50]

There are however, some key differences between the two franchise agreements. First, the CLW franchise has no requirement that the franchisee negotiate with the city should it decide to pursue local advertising as a form of

---

[48] Arkansas Code of 1987 Annotated, 11, Charlottesville, Virginia: The Miche Company, 1987, 1991, 14-164-301 (a)(2)(C).

[49] In its July, 1988 session, the Arkansas legislature approved two bills which would allow municipalities to issue bonds to fund city-owned and operated cable systems. The one which was signed by Governor Bill Clinton is the amendment to the Local Government Bond Act discussed in the text. The other, vetoed by Clinton, would have allowed cities to issue revenue bonds without the approval of voters.

[50] Cable Television Franchise Agreement between the City of Paragould and Paragould Light and Water Commission, authorized by Resolution No. 89-1, January 16, 1989, 5.9, 5.2.

revenue. This difference would later become part of a lawsuit by PCI against the city and CLW. Second, while the performance of both companies was subject to review at the end of the first five year period, in the case of CLW, the review "shall determine whether: (a) Grantee's charges to subscribers are sufficient to cover its costs."[51] PCI's franchise agreement reads, "as a result of such review, the following matters may become subject to negotiation: (a) Grantee's charges to subscribers if the review discloses either that Grantee is making an unreasonable profit or, despite competent management, is not making a reasonable profit."[52]

Third, CLW's franchise agreement states, "all cable programming carried shall be selected by the Citizens'Cable Television Advisory Committee as established pursuant to Section 6 of the Ordinance."[53]

With the franchise agreement in place, the city next wrestled with the issue of financing. In July 1989, CLW Commissioners recommended that city council call a special

---

[51] Ibid., 2.1.

[52] Cable TV Franchise Agreement between Paragould Cablevision, Inc. and the City of Paragould, Arkansas as authorized by Resolution No. 83-22, November 28, 1983, 2.1.

[53] CLW Franchise Agreement, 5.2.

election to authorize a $2.5 million bond issue to fund the construction of the municipal cable system.[54]

At its July 24, 1989 meeting, the Paragould City Council began discussing an ordinance which would call the special election.[55] As part of the discussion Partlow stated that a bond issue would be necessary to finance cable system because the city did not have the means to do so otherwise. Partlow also stated that Stephens, Inc. a Little Rock firm, had been selected to administer the bonds and had requested they be in the amount of $3.22 million.[56] Additionally, Partlow noted that a tax of up to 6.5 mills on real and personal property could be levied if the revenues from cable operations failed to cover the bond payments.

---

[54] Uyttebrouck, "CLW seeks election on bonds for cable", The Paragould Daily Press, July 19, 1989, 1.

[55] Paragould City Council Meeting Minutes, July 24, 1989 AN ORDINANCE CALLING FOR A SPECIAL ELECTION ON THE QUESTION OF THE ISSUANCE OF BONDS UNDER AMENDMENT NO. 62 TO THE ARKANSAS CONSTITUTION FOR THE PURPOSE OF FINANCING CONSTRUCTION OF CABLE TELEVISION FACILITIES IN THE CITY OF PARAGOULD, ARKANSAS; DECLARING AN EMERGENCY; AND PRESCRIBING OTHER MATTERS PERTAINING THERETO

[56] The $3.22 million was considerably higher than the $2.5 million thought necessary to fund the construction of the city's cable system. The additional $720,000 would be used to establish a debt reserve which would cover any shortfall in the cable system's revenues during the issue's term; to cover the first eighteen month's of debt service on the bonds; and to cover the costs associated with bond issuance. For the first three years after completion, the cable systems revenues were required to be equal to 125 percent of the bond payment, dropping to 110 percent in the fourth year.

In an effort to dissuade the city from proceeding with its plans to construct and operate its own system, representatives from Cablevision Systems, PCI's parent addressed members of city council at the July 24 meeting. One of the company's corporate vice presidents, Rusty McCormack, told council members that Cablevision Systems was a new owner and was willing to work with the city to solve any disputes. McCormack also stated that PCI had spent well over $3 million to upgrade its system and Little, PCI's local manager noted that the system was serving 6059 subscribers or about 93 percent of the total possible cable customers in the city of Paragould.[57]

Because the mayor was not satisfied with the terms of the proposed bond issue and was unsure that it would pass, the decision to call the special election was postponed temporarily. Over the next few weeks Partlow discussed the matter further with the bond house and was told that the firm's figure of $3.22 million stemmed in part from its fear of a PCI lawsuit which would lead to delays in construction and add to the costs of the system. He was also told that the bonds would be easier to sell if they were secured by a tax and that the city would receive a lower interest rate.

Although still not convinced that a $3.22 million bond issue was wise, Partlow and the city council decided to leave the issue to the voters and passed the ordinance

---

[57] Paragould City Council Meeting Minutes, op. cit.

calling for the special election at city council's August 14, 1989 meeting. October 31, 1989 was set as the date for the referendum on the bond issue.[58]

Over the course of the next few months, PCI undertook a public relations campaign in which it stressed the company's commitment to the community. Additionally, a series of editorials and letters to the editor appeared in The Paragould Daily Press. Some supported and some opposed the idea of using bonds secured by a tax to finance a municipal cable system. For example, a letter from Perkey reminded voters of the trouble the city had had with both Adams Russell and Cablevision Systems. He noted that PCI's published claims of its commitment to the community rang false.[59] McCormack defended the company's rates, rejected the idea that cable was a utility and in reference to CLW stated, "utilities are not known for marketing non-utility services."[60] One PCI subscriber wrote,

> I was trying to watch television this afternoon and could not because of the interference in the cable. After seeing all the ads in the last few weeks that Cablevision had in the Daily Press about the many good things they had done, were doing and were going to do . . . When I read those ads I wondered if that is the

---

[58] Paragould City Council Meeting Minutes, August 14, 1989.

[59] Don Perkey, "Cable tv company's claims of community commitment ring false," Letter to the Editor, The Paragould Daily Press, October 12, 1989.

[60] Rusty McCormack, "Cablevision executive defends rates, rejects label of 'utility' on company," Letter to the Editor, The Paragould Daily Press, October 13, 1989.

> cable company here in Paragould or if it is in some other city.[61]

Another noted that the proposed city cable system was a self-defeating tax-supported mission.[62]

Over the final few weeks preceding the referendum, PCI undertook an anti-city cable campaign. The campaign featured full page ads in the Daily Press, radio spots and a direct mail piece to subscribers which included an anti-city cable flyer and a reprint of McCormack's letter to the editor.[63]

To counter the attack, the city did nothing officially but, a group calling itself Citizens for Home Owned Cable System emerged with ads promoting a city system. The ads referred to PCI as "an unregulated monopoly", stated that city cable would result in "cheaper rates better service," and "over $1,000,000 in revenue" and that if enough people subscribed to the city-owned system, there would be no tax increase.[64]

---

[61] Homer Edge, "Which cable system are ads referring to?" Letter to the Editor, The Paragould Daily Press, October 26, 1989.

[62] Patrick DeMent, "Proposed city cable system, case of self-defeating, tax-supported mission," Letter to the Editor, The Paragould Daily Press, October 27, 1989.

[63] "Voters will consider city cable financing," The Paragould Daily Press, October 29, 1989, 1.

[64] Citizens For Home-Owned Cable System ads, The Paragould Daily Press, October 26, 27, 29, 30, 1989.

Later in the week, an opposing group calling itself Citizens Against Higher Taxes began running ads. One of the ads, "Don't Be Misled by False Advertising," listed twenty-two items and stated that a subscriber's basic cable charge was used to pay for those items. Included was "22. Property Taxes to the City of Paragould." Another ad was an open letter to the People of Paragould from Bill Little, Manager of Paragould Cablevision.[65] The letter highlighted the company's 45 channel basic service and the availability of seven premium services.[66]

Despite all the publicity, only 2651 of Paragould's approximately 7000 registered voters turned out on October 31. They approved the issuance of the bonds by a vote of 1549 for, 1102 against. The full text of the ballot issue is presented in Appendix F.

The next day the Daily Press reported that Watson said that six months after the sale of the bonds, the first customers would be hooked up and that it would take another

---

[65] Paragould Cablevision and Citizens Against Higher Taxes, ads in The Paragould Daily Press, October 27, 29 and 30, 1989.

[66] On October 31, 1989, PCI charged most subscribers $16.95 a month for the 45-channel basic service. Premium services were another $10 a month each.

The company also announced plans to provide a "Economy Basic" package for $9.95 a month to low-income senior citizens over 65 beginning December 1.

six months to finish hooking up the rest of the city.[67] In the same report, Little was quoted as saying that his company was prepared to compete with the city but that he couldn't or wouldn't say how the company would compete. Little also reportedly said that he didn't foresee his company filing a lawsuit against the city in the near future.[68]

In an editorial, the Daily Press cautioned that CLW still had some obstacles to overcome, "not the least of which is convincing more people than the total number of voters in the bond issue election to subscribe to its system."[69] The editorial also noted that CLW will "need to assert itself in the marketplace if it is to successfully compete with an established private enterprise."[70]

In December, 1989, the Citizens' Cable Television Advisory Committee began a series of public meetings and invited comment on the programming that should be included as part of CLW's basic cable package.[71] By mid-January the

---

[67] Uyttebrouck and Kitty Sloan, "Voters approve cable financing," The Paragould Daily Press, November 1, 1989, 1 and 3.

[68] Ibid.

[69] "Cable TV battle only beginning," Editorial, The Paragould Daily Press, November 1, 1989,

[70]. Ibid.

[71] Kitty Sloan, "City Cable Committee Studies Programming," The Paragould Daily Press, 1 and 5, December 21, 1989.

committee had made its decisions and its chair reported that the programming offered on the city's system would not differ a great deal from programming that was offered by Paragould Cablevision. He also noted that the committee hoped "the big difference will be in service and costs."[72]

On Monday, January 15, 1990, Mark McBryde, a Stephens, Inc. vice president, presented a report to the Paragould city council. According to McBryde, the city's bonds were expected to be brought to market the following Tuesday.[73] That Thursday, January 18, 1990, PCI issued a press release in which it stated that it had filed a lawsuit in Greene County Chancery Court against the City of Paragould and the Paragould Light and Water Commission. According to the press release, the suit

> seeks to enjoin the City and Commission from constructing and operating a cable television system as planned in Paragould. The complaint contends that the operation of a cable television system exceeds the Light and Water Commission's authority granted it under state law and the City's attempt to give the Commission this authority is also prohibited.[74]

---

[72] Sharon Knight, "Residents express interest in sports, shopping channels," The Paragould Daily Press, January 19, 1990, 1.

[73] Paragould City Council Meeting Minutes, January 15, 1990.

[74] Press release, Cablevision Systems, Inc., January 18, 1990.
Paragould Cablevision, Inc. v. City of Paragould, Arkansas; and Paragould Light and Water Commission, Complaint, Civil Action No. 90-17, Greene County, Arkansas Chancery Court, Filed January 18, 1990.

Commenting on the suit, Watson said that CLW had anticipated the filing of a lawsuit but "regrets that PCI felt the need to attempt to legally thwart the will of the citizens of Paragould, expressed in two public referendums."[75] The city formally answered the suit by contending that it is "without justification and merit and should be dismissed."[76]

On January 29, 1990 PCI filed a second suit against the city. This suit was filed in a federal court and sought injunctive relief for violations of federal antitrust laws, the First and Fourteenth Amendments and for breach of contract.[77] The city and CLW filed a motion to dismiss the federal suit primarily on the grounds that its actions are immune from antitrust liability under the Parker doctrine of state action.[78]

On February 20, 1990 Chancery Judge Howard Templeton ruled in favor the city and CLW. In a letter to the

---

[75] Sharon Knight, "City responds to cable suit," The Paragould Daily Press, February 1, 1990, 1.

[76] Ibid.
Paragould Cablevision, Inc. v. City of Paragould, Arkansas, et. al., Separate Answer of Defendant Paragould Light and Water Commission, E-90-17, filed February 2, 1990.

[77] Paragould Cablevision, Inc. v. City of Paragould, Arkansas, et. al., Complaint, Civil Action No. J-C-90-14, U.S. District Court for the Eastern District of Arkansas at Jonesboro, filed January 29, 1990.

[78] Paragould Cablevision, Inc. v. City of Paragould, Arkansas, et. al., J-C-90-14, Motion to Dismiss, filed February 20, 1990.

attorneys involved in the litigation, Templeton stated that the city has the authority to build and operate a cable system and issue bonds to finance its construction.[79] Cablevision appealed, but Judge Templeton's findings were upheld.

In May, 1990 the federal suit was dismissed without a hearing by U. S. District Judge G. Thomas Eisele.[80] That suit was also subsequently appealed but upheld.[81] Because these two lawsuits are quite complex and the issues key to a discussion of the legality of municipal ownership of cable television systems in competition with a private operator, the litigation is discussed at length later in this chapter.

At its June 18, 1990 meeting, city council formally set the price and interest rate structure of the bonds to finance the city's cable system and authorized Stephens, Inc. to purchase the entire issue by adopting Ordinance No. 90-10.[82] As part of its presentation to council,

---

[79] "Judge Releases Findings in cable lawsuit," The Paragould Daily Press, February 28, 1990, 1.

[80] Paragould Cablevision v. City of Paragould, Ark. 739 F. Supp. 1314 [1990] (E.D. Ark.)

[81] Paragould Cablevision v. City of Paragould, Ark. 930 F. 2d 1310 [1991] (8th Cir.)

[82] Paragould City Council Meeting Minutes, June 18, 1990. AN ORDINANCE AUTHORIZING THE CONSTRUCTION OF CABLE TELEVISION FACILITIES IN THE CITY OF PARAGOULD, ARKANSAS, AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION CAPITAL IMPROVEMENT BONDS FOR THE PURPOSE OF FINANCING THE COST OF CONSTRUCTION, PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST ON THE BONDS; PRESCRIBING VARIOUS MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY, Ordinance No. 90-10. The

Stephens, Inc. reported that it had decided to purchase all of the city's bonds because the firm's regular buyers had balked at purchasing the bonds while litigation was pending.[83]

An article in the Daily Press on August 19, 1990 stated, "Paragould's cable war has begun" and outlined actions undertaken by PCI in anticipation of the pending competition from City Cable.[84] Those actions included the unscrambling of eight channels making the use of converters in conjunction with cable-ready television receivers unnecessary. Subscribers had long complained about paying a monthly fee for the converters which rendered their own remote controls useless. From the very beginning City Cable had emphasized that its system would be addressable and not require the use of a converter. PCI had also consolidated a 40-channel basic service at a rate that was $1.50 per month lower for most customers.[85]

---

ordinance was first presented at council's January 22 meeting.

[83] Meeting Minutes, June 18, 1990.
The bonds ultimately issued by the city to finance the construction of its cable system are general obligation capital improvement bonds in the principal amount of $3,220,000 and are secured by the pledge of a 6.5 mills ad valorem tax on all taxable real and personal property in the city.
Ordinance No. 90-10

[84] Sloan, "Cablevision preparing for competition," The Paragould Daily Press, August 19, 1990, 1.

[85] Ibid.

In a related article, City Cable's recently appointed Superintendent, Jack Brinkley outlined the city's plans. He promised "higher quality at a lower monthly cost" and noted that City Cable intended to build a studio for its public access channel, to offer video classes to help residents interested in producing their own programs, and to provide local color weather radar and an emergency alert system that would be capable of breaking into all channels with weather warnings.[86]

In response, PCI manager, Little said that the equipment which City Cable was planning to use to avoid the need for converters was "unproven technology." He also said that Cablevision planned no changes in its local programming.[87]

In December, 1990 Paragould City Council adopted an ordinance establishing the rates to be charged by City Cable for its basic and premium services. The ordinance also set rates for local advertising on the system.[88] The rates

---

[86] Sloan, "City Cable preparing for battle," The Paragould Daily Press, August 20, 1990, 1 and 3.

[87] Ibid.

[88] Paragould City Council Meeting Minutes, December 10, 1990.

Ordinance No. 90-38 AN ORDINANCE ESTABLISHING THE RATES FOR THE SALE AND DISTRIBUTION OF AUDIO AND VISUAL TELEVISION, RADIO AND OTHER SIGNALS AND RELATED SERVICES TO BE FURNISHED BY THE MUNICIPAL CABLE TELEVISION SYSTEM AS ADMINISTERED BY THE PARAGOULD LIGHT AND WATER COMMISSION IN ACCORDANCE WITH REFERRED ORDINANCE ADOPTED JUNE 17, 1986, AND ORDINANCE 90-11 ADOPTED FEBRUARY 12, 1990; DECLARING AND EMERGENCY AND FOR established for City Cable's basic and premium services are outlined in Table 2.

Table 2
Paragould City Cable Monthly Rates for Service

Basic Service*	Premium Services	
$12.50	HBO	$8.95
	Showtime	$8.95
	Movie Channel	$7.00
	Cinemax	$7.00
	Disney	$7.00

*Basic Service was to include 40 channels of programming

Paragould Cablevision, Inc.'s rates as of December 10, 1990 are presented in Table 3.

OTHER PURPOSES.

Table 3
Paragould Cablevision, Inc. Monthly Rates for Service

Basic Service*	Premium Services	
$14.50	HBO	$10.00
	Showtime	$10.00
	Movie Channel	$10.00
	Cinemax	$10.00
	Disney	$10.00

*Basic Service included 38 channels of programming.

In addition to plans to offer programming at lower rates than PCI, the city also intended to offer complimentary services such as free remote controls and two free extra outlets. At the time, PCI was charging $3.00 a month for a remote control and $3.00 for each additional outlet.

In full page ads titled "Cablevision Loves Paragould", PCI announced that beginning January 1, 1991, subscribers who had been with the company for at least two years would be charged only $9.50 a month for basic service. The company also planned to include American Movie Classics, then a premium service, as part of the basic package and to lower its fees for HBO and Disney to $5.00 and $3.00 a month respectively. Not surprisingly, PCI also stated that beginning January 1, 1991 it would provide free remote controls, free installation and eliminate charges for additional outlets.[89]

---

[89] "Cablevision slashes rates," The Paragould Daily Press, December 26, 1990, 1.

City Cable went on line March 2, 1991. According to press accounts of the event, Partlow said that the competition between City Cable and Paragould Cablevision would ensure that cable customers would enjoy low rates and many choices for years to come, regardless of to which company they chose to subscribe.[90] Once City Cable went on line, PCI filed a third lawsuit against the city. That suit alleged that City Cable's employees had been disconnecting Cablevision's wires from customers who were switching to City Cable.[91] In response CLW filed a motion asking the court to either dismiss the suit or compel Cablevision to add the property owners, that is, the subscribers to the suit.[92] In April, the court denied the motion to dismiss the suit but did grant the alternative motion, compelling PCI to add the property owners to its suit.[93] In September, 1991, PCI filed a motion to dismiss the suit stating that the company "does not desire to proceed with

---

[90] Fred Miller, "City Cable goes on line," The Paragould Daily Press, March 3, 1991, 1.

[91] "Cablevision sues City Cable over wiring dispute," The Paragould Daily Press, March 13, 1991, 1.

[92] "Motion seeks dismissal of suit against City Cable," The Paragould Daily Press, March 31, 1991, 1.

[93] Knight, "Judge denies motion in latest cable suit; trial dates scheduled," The Paragould Daily Press, April 23, 1991, 1.

the action at this time by naming property owners as defendants as directed by the court."[94]

In November, 1990, a Cablevision vice-president addressed the Paragould Lions Club and spoke on the issue of competition. At that time he said that Cablevision recognized that some people were unhappy about the fact that the company had filed suits against the city. But, he stressed the fact that PCI would continue to use any legal means necessary to face the competition; and that the company would compete in the areas of product, pricing and service.[95] A discussion of the three forms of competition follows.

Price Competition

Much of the conflict between the City of Paragould and its incumbent cable operator prior to March, 1991 centered on price. The rate history of PCI is presented in Table 4.

---

[94] "Company requests dismissal of lawsuit over wire," The Paragould Daily Press, September 12, 1991, 1.

[95] Doug Jarvis, Cablevision Systems, Inc. quoted in Ellen Meadows, "Cablevision VP promises to keep customers," The Paragould Daily Press, November 13, 1990, 1.

Table 4
Paragould Cablevision, Inc. Basic Service Rate History

Date	Price/month	No. of Channels
October, 1984	$9.00	11
December, 1984	$9.45	11
January, 1985	$9.92	11
October, 1985	$11.00	11
August, 1986	$11.00 $15.00*	11 18
October, 1987	$11.00 $15.00*	11 18
June, 1988	$13.00 $16.00**	23 31
June, 1989	$13.00 $16.00	29 35
August, 1990	$14.50	40
January, 1991	$11.50***	40
January, 1992	$11.50	40
February, 1993	$11.50	43

*Price for "Super Tier", an expanded basic service
**Price for "Family Cable", replaces "Super Tier"
***Effective January 1, 1991, those subscribers who have been with PCI for one year receive a discount of $1 per month while those who have subscribed for two years or more receive a $2 a month discount.

Table 5 is a comparison of the basic cable rates in Paragould with the average U. S. basic cable rates.

Table 5
Basic Cable Rates U.S. vs. Paragould

Year-End	U.S. Average[96]	Paragould
1984	$9.20	$9.45
1985	$10.24	$11.00
1986	$11.09	$11.00 $15.00*
1987	$13.27	$11.00 $15.00*
1988	$14.45	$13.00 $16.00*
1989	$15.97	$13.00 $16.00*
1990	$17.58	$14.50
1991	$17.75	$11.50** $12.50***

*Expanded basic
** PCI
***City Cable

Since City Cable went on line in March, 1991, the established price for basic and pay cable services in Paragould has remained unchanged. However, both sides have engaged in aggressive marketing campaigns to attract and keep subscribers. In its first few months of operation, without too much effort, City Cable had installed about 1200

---

[96] Cable Television Developments, 6a.

customers, representing a market share of about 18 percent. Then, according to Watson, the growth just stopped. Recognizing that something had to be done to attract more subscribers, in the summer of 1991 the city began doing local programming and initiated a campaign entitled "3000 by 92".[97] The campaign included some radio and newspaper advertising but focused on employee incentives. All CLW employees were encouraged and rewarded for persuading friends, neighbors and relatives to become City Cable subscribers. The campaign was successful. The company reached its goal and began climbing to 3300 subscribers.[98]

Based on the success of its first campaign, City Cable began a second. The goal of the second campaign was to be "Number 1 by August 1". That campaign appeared to be doing well. Then, in early summer 1992, Paragould Cablevision began a campaign of its own. It offered subscribers three months of basic service for $.92 (less than $.30 a month), $20 gift certificates that could be used in local restaurants, supermarkets and discount stores, and entered subscribers in a contest for a trip to Hawaii.

---

[97] Watson interview.
Sloan, "City Cable starts campaign to get 3000 subscribers," The Paragould Daily Press, July 17, 1991, 1.

[98] Watson interview. According to Watson, PCI had approximately 6800 customers when City Cable went on line. As of February, 1993 there were about 7200 total cable subscribers in Paragould.

Watson noted that PCI's campaign was initially successful and resulted in a loss of about 100 City Cable subscribers. While City Cable was eventually able to win back the subscribers it had lost to PCI during the summer of 1992, it took awhile.

As of February, 1993, City Cable reported 3360 customers, a market share of about 47 percent.[99] PCI was in the midst of a promotional campaign entitled "Come Home to Country". As part of this campaign the company was offering free installation and one month free service, another $20 gift certificate and entry into a contest for a trip for four to Nashville and The Grand 'Ole Opry.

When asked what effect PCI's promotions have had on City Cable subscribers, Brinkley replied that customers will switch to PCI for the length of the promotion but after a while, the customer switches back to City Cable. These promotions are costly for both companies. For PCI there is the cost of the promotion itself as well as advertising and marketing costs. Additionally, both companies incur installation costs that are generally not recouped because neither company charges an installation fee.

When asked what City Cable's future marketing plans were, Brinkley replied that the company had no such plans, no special deals. He described the company's philosophy as follows:

---

[99] Brinkley, Paragould interview.

> We've got the same price today, the same packages as we had two years ago when we hooked up our first customer. We have not changed our pricing any, we have not changed anything. We stuck with our original game plan. [Because] what really bothered people in the city was the fact that depending on which Cablevision deal a customer got, their rate varied. And, people were getting really confused because of all the different rates and packages and ups and downs. There was no set rate really for anybody. So, we've always stuck with the same simple packages, the same simple rates . . . It would be real easy for us to offer free HBO for a month. Or, free HBO for three months. If you sign up for three months we'll give you this, we'll give you that. But then, you've just confused everything. Bottom line is, we're owned by the public. So, why should I take money out of this guy's pocket, just so I can get that guy to join the club. I just don't think it's right.[100]

On the issue of price competition between City Cable and PCI, Richard Hale, PCI's General Manager remarked, "the market is very price sensitive."[101] Watson concurs, "We're now at the point where price is driving the market."[102] Brinkley has said that he has resisted pressure from the mayor and city council to lower City Cable's prices because he is convinced that doing so would initiate a price war. "Why cut both our necks?"

Hale said, "We're gonna do what we have to do to maintain our market share, [but] we don't have any plans for the immediate future to change our prices."[103]

---

[100] Ibid.

[101] Hale interview.

[102] Watson interview.

[103] Hale interview.

Although price may be the most critical component in a competitive situation, Hale and Watson concurred that product differentiation in terms of program offerings and service could not be overlooked. Watson stated, "We're now looking at lower price, more channels or better service to increase customers.[104]

Customer Service

In Paragould, PCI and City Cable differentiate themselves with respect to customer service in terms of response to complaints, convenience of installation and general system reliability. When asked whether PCI's customer service had changed with the presence of competition, Hale noted that customer service had always been a top priority for the company. In describing a program called "ServicePlus" Hale said, "What this basically says to a subscriber is, 'if we don't respond to a non-power service outage within the next 60 minutes, we'll give you a credit for your next month's bill.'"[105] He also noted that the company had had the program in place for years but had never formally marketed it until faced with competition.

He also noted that while the company used to conduct subscriber surveys twice a year to gauge customer satisfaction, "we now do them once a month."[106] Those

---

[104] Ibid.

[105] Hale interview.

[106] Ibid.

surveys include random samples of 100 subscribers and another of 50 to 100 subscribers who have had direct contact with the company. The Paragould system had been recognized for outstanding customer service by Cablevision Systems, Inc. for two consecutive years.[107]

To Brinkley, City Cable's customer service is one the key factors that distinguishes the company from PCI. Hamilton, CLW's attorney noted that one of the things CLW had always provided to its customers was excellent service. He believes that the utility's history of good service was one of the factors that led to the voters authorizing CLW to construct a cable system.

To be able to respond quickly to calls from customers, Brinkley stated that City Cable runs its service department 24 hours a day, seven days a week and noted, "no matter what it is, you call us, within 30 minutes we're there." He also said,

> my philosophy is if you have a good product, even if it's more expensive, if you put service behind it, you'll have a good solid customer . . . and it has worked, because we are more expensive than our competition[108]

Because of the high level of cable penetration in Paragould, much of the customer service detailed above relates to the restoration of service outages. However,

---

[107] Ibid.
"Cablevision wins award for second year in a row," The Paragould Daily Press, March 25, 1992, 9.

[108] Brinkley, Paragould interview.

that service also relates to the ease and convenience of installation. According to Brinkley,

> When I first came to town, I had to wait a week to have my cable installed. But, now if you walk in there today and say I'd like to get hooked up this afternoon at 3 o'clock, someone would be there to get you hooked up at three o'clock.[109]

To Brinkley competition is responsible for the change. To further illustrate his point, he recounted an experience where City Cable received a call from a local business owner at 9 p.m. the night before the Clinton inauguration.

> This person had purchased a new television set and wanted to have cable installed in time to watch the inauguration at 11 a.m. the next day. City Cable sent someone out at 8 a.m. and by 9 a.m. had the man hooked up. I came to find out later that the owner had called both cable companies and decided that whoever got there first, got the business.[110]

Another feature of City Cable's customer service program that Brinkley believes distinguishes the company from PCI is the use of an Automatic Response Unit (ARU) which enables customers to purchase pay-per-view events 24 hours a day. While PCI customers are now able to do the same, there was about an eighteen month period during which PCI only took pay-per-view orders during regular business hours.

Customer service is also differentiated in terms of general system reliability. In designing a system to compete against PCI, Brinkley said that he recognized that

---

[109] Ibid.

[110] Ibid.

because of their corporate resources, anything the city could do, PCI could do. "There's no technological competitive advantage that we can gain that they can't match."[111] As a result, "what we did was put together a good solid system so if they matched it then everybody would have good quality service. And that's what's been going on."[112] Brinkley did note that there were some areas where PCI hasn't matched City Cable. For example, City Cable used jacketed cable throughout the system because it is less subject to power outages than unjacketed cable. The city's system also has a battery backup for each of its power supplies and uses off-premise addressability which enables the company to add and delete services for customers without making a service call or placing a converter in the customer's home.[113] Besides price and customer service,

---

[111] Ibid.

[112] Ibid.

[113] It was off-premise addressability that Little referred to as "unproven technology" in his response to City Cable's announcement of its plans in August, 1990.

See p. 144.

Others in the industry would argue that there are two problems with this technology: 1.) The off-premise converters require a power source and if that power is sent down the cable lines, noise is introduced into the system. There is also the question of who pays for that power. 2.) Because all of the broadband signals are sent directly to the converter which is installed at the subscriber's home, there is a high risk of signal piracy.

Director of Marketing, Coaxial Cable Communications, telephone interview by author, April 28, 1993.

competition in Paragould also takes place through the differentiation of program offerings.

Program Offerings

Shortly after City Cable went on line, PCI began sending letters from its general manager to those subscribers who had decided to switch to City Cable. The letter highlighted PCI's lower rates and exclusive program offerings. It read in part,

> Dear Neighbor, We're sorry you're leaving us. . . Feel free to come back to us. . . From program packages priced below the competition's to exclusive St. Louis Cardinal Baseball, the NFL on ESPN and TNN. . . We'll continue to offer Paragould what we consider the best cable service available.[114]

While City Cable still does not have ESPN's package of eight Sunday night NFL games, according to Richard Hale, in terms of programming the two systems are almost "twin sisters."

Brinkley noted that in the beginning however, City Cable had difficulty getting both TNN (The Nashville Network) and the Cardinals Baseball. With respect to TNN, Brinkley said, "They didn't take us seriously . . . until we reached a 1000 subscribers, then they took us seriously."[115]

Acquiring the Cardinals Baseball was more troublesome and more costly. The availability of a station carrying the

---

[114] Undated letter from Bill Little, to subscribers.

[115] Brinkley, Paragould interview.

Cardinal games had been a point of contention between the city and its incumbent cable operator going back to Adams-Russell. According to Watson, Herget and Brinkley, people in Paragould are diehard Cardinals fans and as a result, having an exclusive contract for the games worked to the advantage of PCI. According to Brinkley, the United Artists cable system in Jonesboro pays for the rights to carry the Cardinals' games and to provide it to other cable systems in the area, including PCI, on a cost-share basis via microwave. During the summer of 1991, the Cardinal Sports Network's owners wouldn't negotiate with City Cable and the system was excluded from carrying the games. Brinkley stated, "That first year, they (PCI) killed us. They gave away a busload trip to the Cardinal Games and they ran full page ads about the exclusivity (of the games) on PCI."[116] By the second summer, 1992, City Cable had resolved its dispute with the Cardinal Sports Network and was able to carry the games.

Watson noted that access to programming is critical and that CLW was fortunate that PCI didn't have an exclusive contract with Turner. "I know we couldn't make it without Turner; without CNN, Headline News, TNT."[117] He also noted that City Cable began doing local programming in the summer of 1991 in effort to attract more subscribers and as a way

---

[116] Ibid.

[117] Watson interview.

of differentiating itself from its competition. That programming includes a weekly news show anchored by reporters from KAIT in Jonesboro, cooking shows, and other community events. The system also offers live coverage of city council and quorum court meetings,[118] on a regular basis.

While offering local programming may be a way for a cable operator to differentiate its product, it can be expensive. While admitting that City Cable had gotten a bit carried away with local programming in the beginning and has since scaled back a bit, Brinkley also noted, "People watch that stuff. Maybe not a lot, maybe it's only five or ten people. But, that's five or ten customers we have because we've got something they like. That instills a good memory in those people."

Hale stated that PCI had become involved in local programming over the last year but not to the extent that the city had.

> We do local programming where subscriber interest would warrant it. City council meetings, quorum court meetings, Christmas Parades -- we do those kinds of things. We don't get into some of the other types of local programming that the city does. We feel the networks do a much better job of that.[119]

---

[118] Quorum court is the system of government used by counties in Arkansas.

[119] Hale interview.

He also noted that local programming was never an issue prior to competition. "I'm sure there is some interest out there. [But] it's usually a niche appeal."[120]

<u>Strategic Behavior</u>

Engaging a potential opponent in litigation is a key tactic used by incumbent cable operators to thwart entry by a rival. Hamilton and Robert Thompson, attorneys for CLW and the City of Paragould respectively, maintain that the suits filed by PCI against CLW and the city were part of Cablevision's competitive strategy. In a videotaped statement, Thompson said,

> In early 1990 we reached the point where we were going to entertain the legislation at city council to authorize the actual issuance and placement of the bonds. The Thursday before the meeting, the first suit was filed by Cablevision. I think you will find there was never much merit in these suits. They were preemptive strikes. They were meant to frustrate the building of the system and create as much expense and trouble and to put the process off for as long as possible.[121]

In correspondence Hamilton noted,

> I have further told you that it is my general observation that these challenges to competition are mounted by private cable companies in the same identical way. For example, we compared the lawsuits against us with those in Glasgow, Kentucky and found that they were virtually identical and filed in virtually the same order. I am told that similar

---

[120] Ibid.
It should be noted that there is nothing in either PCI's or CLW's franchise agreement that requires public access or local origination channels.

[121] Robert Thompson, Counsel for the City of Paragould, Arkansas, videotaped statement, September, 1992.

challenges have been mounted in the same way to cities in Florida attempting to establish cable systems.[122]

Hamilton and Thompson devised their own strategy to counter PCI's anticipated attacks. For example, Hamilton wrote the ordinance adopted by Paragould voters in June, 1986. To avoid charges that the city was making editorial decisions, the ordinance created the Citizens' Cable Television Advisory Committee as an independent entity and gave it the responsibility of choosing the programming to be offered on the municipal system. The ordinance also specified that "the power to establish fees and charges to customers for the use of the services. . .shall be in the City Council of the City of Paragould, Arkansas,"[123]

Thompson and Hamilton also recognized the need for state statutes which would authorize cities to own, operate and finance cable systems. Thompson recalled,

> After the election of June, 1986, when people voted for a city-owned system, we realized we needed some state legislation to facilitate our success. We prevailed on the legislature in 1987 to specifically authorize cities to operate a cable system. In a subsequent special session, the legislature amended

---

[122] Donis Hamilton, Paragould, letter to author, January 20, 1993.

[123] AN ORDINANCE MAKING FINDINGS OF FACT, AUTHORIZING THE PARAGOULD LIGHT AND WATER COMMISSION TO PURCHASE, ACQUIRE, CONSTRUCT, EQUIP, OPERATE, MAINTAIN AND EXTEND A COMMUNITY ANTENNA TELEVISION SYSTEM, SOMETIMES KNOWN AS A CABLE TELEVISION SYSTEM, ON A NON-EXCLUSIVE BASIS, ESTABLISHING A CITIZEN'S CABLE TELEVISION ADVISORY COMMITTEE AND FOR OTHER PURPOSES, June 16, 1989, Sections 4 and 5.

> bonding statutes that permitted us to issue bonds to construct the system.[124]

Additionally to make it "crystal clear" that the city council did not delegate its authority to set rates or any other legislative authority to CLW, following Hamilton's advice, in January, 1990, council passed an ordinance amending the June 17, 1986 ordinance authorizing the municipal system.[125] In relevant part, the ordinance as amended states

> there shall be added to the (franchise) agreement a new Section 9 which shall state as follows:
>
>> Nothing in this agreement shall be construed to grant to the Grantee any legislative authority, it being the intention of the Grantor to grant to the Grantee administrative and ministerial duties associated with the construction and operation of a cable television system by Grantee but reserving to the city council all legislative power.[126]

The 1990 ordinance specifically states that the reason for amending the 1986 ordinance was because suits had been filed by PCI against the city and CLW.[127] The ordinance also stated that the

> successful implementation of the policies expressed by the referred ordinance adopted by the people have been

---

[124] Thompson statement.

[125] Paragould City Council Meeting Minutes, February 12, 1990.
AN ORDINANCE AMENDING ORDINANCE REFERRED TO THE PEOPLE BY RESOLUTION NO. 86-3 AND PASSED BY SPECIAL ELECTION DATED JUNE 17, 1986; DECLARING AN EMERGENCY AND FOR OTHER PURPOSES: ORDINANCE NO. 90-11.

[126] Ordinance No. 90-3, paragraph 6.

[127] Ibid, paragraph 1.

> frustrated by the misinterpretations of the intentions of the parties, the city council does hereby declare an emergency to exist and this ordinance . . shall be effective from and after its passage.[128]

With respect to competitive strategy, Hamilton stated,

> You've got to outfox them. . . You've got to know why they're going to do something. You've got to understand what's driving them, what's motivating them and what their interests are. We knew from the get go they'd number 1 try to challenge the authority and they'd try to chill the money.[129]

There is some evidence that the suits filed by PCI against the city and CLW had a chilling effect on the city's ability to get financing. In a report to Partlow and the Paragould City Council, regarding the bonds that the city planned to issue to finance its cable system, McBryde, of Stephens, Inc. wrote,

> In making contact with the original investors, we found a significant number that would pass as a result of the continuing litigation. We believe the city will ultimately prevail and has the authority to levy up to 6.5 mills as security for this bond issue. Stephens is willing to purchase this financing at the interest shown within this report. Our intention is to hold the bonds until litigation has been resolved. We believe this period could be between six months and two years.[130]

While entering into litigation may be part of competitive strategyy, in the case of Paragould, Arkansas that litigation also provides a primer on many of the issues

---

[128] Ibid.

[129] Hamilton interview.

[130] Mark McBryde, Vice-President, Stephens, Inc. Report to Paragould, Arkansas, General Obligation Capital Improvement Bonds, Information Regarding Bond Pricing, June 13, 1990.

associated with the municipal ownership and operation of a cable system in competition with a private operator.

The first suit filed against the city and CLW by PCI was filed in the Greene County Chancery Court on January 18, 1990. In its complaint PCI stated that it was seeking to have the defendants, CLW "preliminarily and permanently enjoined from constructing and operating a cable television system in Paragould, Arkansas."[131] PCI alleged that the construction and operation of a cable television system by CLW would constitute "an unlawful ultra vires act beyond the powers conferred on CLW" as a municipal utility. Further, the issuance of bonds secured by a tax to finance the system "would constitute and illegal exaction" under the Arkansas constitution.[132] PCI also argued that even if CLW had the authority to construct and operate a cable system, the franchise agreement between the city and CLW unlawfully delegated legislative powers to CLW.[133]

A similar case was argued in the U.S. Court of Appeals in 1990. In Warner Cable Communications v. City of Niceville, the incumbent operator stated that an ordinance permitting the city to issue bonds to finance the construction and operation of a cable system infringed on

---

[131] Paragould Cablevision, Inc. v. City of Paragould, Arkansas and Paragould Light and Water Commission, Complaint, E-90-17.

[132] Ibid., paragraph 7.

[133] Ibid., paragraph 8.

the incumbent's First Amendment rights. The case also challenged the city's authority to create an independent editorial commission.[134] That court found that the city's ordinance did not infringe upon Warner Cable's First Amendment rights and the establishment of an independent editorial board did not offend the Florida Constitution's prohibition against the delegation of unrestricted legislative authority.[135]

In February, 1990, Judge Howard Templeton denied plaintiff PCI's motion for a preliminary injunction and granted the defendants' motion for summary judgement. He said, under the Arkansas statute enacted in 1987, the city has "the authority to construct and operate a cable television system." Additionally, under the 1988 amendment to the Local Government Bond Act, "the city has the authority to issue capital improvements bonds to finance the construction and installation of a cable television system". Finally, Templeton stated, the city can legally and properly delegate to CLW the authority to construct and operate a cable system. "The franchise agreement entered into between the City of Paragould and Paragould Light and Water Commission, as amended [in January, 1990] reflects the delegation of administrative and ministerial functions and

---

[134] Warner Cable Communications v. City of Niceville 911 F. 2d 634 [1990] (11th Circuit).

[135] Ibid.

is not . . . an unlawful delegation of the city's legislative authority."[136]

The second suit was filed in federal court on January 29, 1990. In this action PCI once again sought to enjoin the city and CLW from entering the cable business. The complaint contained three counts. Count I, attempt to monopolize, charged the city and CLW with anti-trust violations under Section 2 of the Sherman Act. The anti-trust charges were based in part on CLW's status as a government-created electric utility monopoly and its ownership and control of utility poles that are "necessary for the operation of PCI's cable system."[137] Count I also alleged that CLW would use its "leveraging power" to force PCI to pay for the relocation of cable lines that would be necessary to make room on the poles for a second cable system.[138] PCI argued that

> CLW's power to control the use of the poles, its monopoly power held in the provision of electric service, its new status as a direct competitor with PCI and its announced intend to proceed with the construction and operation of a cable television system

---

[136] Paragould Cablevision, Inc. v. City of Paragould, Arkansas and Paragould Light and Water Commission, Order, E-90-17.

[137] Paragould Cablevision Inc. v. City of Paragould, Arkansas and Paragould Light and Water Commission, Complaint, J-C 90-14, paragraph 28.

[138] Ibid., paragraph 29.
The ability of an entity such as CLW to use its monopoly power in one market, for example, electric service, to amplify or "leverage" its position in another competitive market constitutes a liability under the theory of monopoly leverage.

> results in a dangerous probability of success in excluding competition from and monopolizing the relevant market.[139]

With respect to the city, PCI asserted that its dual role as a competitor to and regulator of PCI's operations suggested that the city, like CLW, would "enjoy a dangerous probability of success in excluding competition from the relevant market."[140]

Count II of the complaint stated that parts of the 1983 franchise agreement between the city and PCI violated PCI's First and Fourteenth Amendment rights. Specifically, Paragraph 2.4 of the franchise agreement stipulated that PCI must notify the city if the company were going to engage in any activity, including the sale of local advertising, that would generate additional revenues for the company. The franchise agreement also required PCI to negotiate with the city before undertaking this type of activity. Implied in this stipulation was the likelihood that the city would allow PCI to engage in additional income-generating activities but would require any revenue from those activities to be included in the calculation of the franchise fee.

From PCI's point of view, the fact that its franchise agreement with the city required the notification and negotiation outlined above while CLW's did not constitute a

---

[139] Ibid., paragraph 31.

[140] Ibid., paragraph 32.

"discriminatory media tax in violation of the First and Fourteenth Amendments."[141]

Count III of the complaint stated that when the city granted to CLW a franchise that contained no prohibition against local advertising, the city breached its contract with PCI.[142]

In response, the city and CLW filed motions to dismiss. With respect to the charges of anti-trust violations, the defendants' motions were based primarily on the belief that both were protected under the state action immunity doctrine.[143]

The city and CLW outlined the doctrine as created in the 1943 case, Parker v. Brown. "The essence of the doctrine is that the federal antitrust laws were not intended to restrain the acts of state government as sovereign that might otherwise be considered anti-competitive."[144] The defendants stated that their construction and operation of a cable television system in competition with a private operator was an action contemplated and permitted by the State of Arkansas.

---

[141] Ibid., paragraph 40.

[142] Ibid., paragraph 43.

[143] Paragould Cablevision, Inc. v. City of Paragould, Arkansas and Paragould Light and Water Commission, Motion to Dismiss, J-C 90-14, p. 2.

[144] Ibid., pp. 4 and 5.
Citation omitted.

By enacting the 1987 statute specifically authorizing cities to own and operate cable systems at a time when "virtually every city and town was already receiving cable service through a private operator," the Arkansas legislature recognized that a municipal system would probably compete with a privately-owned system.[145] The defendants also noted that because so many Arkansas cities and towns operate their own utilities, "it is logical to assume that the legislature recognized that municipal cable systems would likely be operated through such entities" and that the cities would be both regulators and competitors.[146]

Continuing to respond to Count I of PCI's complaint, the city and CLW argued that even if the court found that the state action immunity was not applicable, to find in favor of the plaintiffs would

> stand anti-trust law on its head. . .By plaintiff's own admission, it, <u>not</u> Defendants is currently a <u>monopolist</u> in the very market that it alleges Defendants are attempting to monopolize, in which market Defendants currently have zero market share. And as a relief, Plaintiff seeks to have Defendants excluded from the "relevant market." Thus, . . . Plaintiff is asking the court, under the guise of an attempt to monopolize claim, to <u>preserve</u> Plaintiff's current monopoly.[147]

The city and CLW argued that Count II should be dismissed because the issue of local advertising "does not

---

[145] Ibid., p. 7.

[146] Ibid.

[147] Ibid., p.9.

state a claim under the first amendment" and PCI's franchise agreement with the city was a voluntary contract, not subject to equal protection under the Fourteenth Amendment.

The defendants also stated that Count III should be dismissed as a pendent claim because it involves claims based on state rather than federal law.[148]

In May, 1990 the court ruled in favor of the city and CLW and granted the motions to dismiss.[149] In dismissing the plaintiff's claims that the defendants violated federal anti-trust laws, the court stated that the passage of two statutes relating to cable television by the General Assembly of Arkansas authorized the City of Paragould to enter into the cable television market. The statutes also "reflected the state's policy to permit the city to 'displace competition' since the 'challenged restraint is a necessary and reasonable consequence of engaging in the authorized activity.'"[150] As a result, "the clear delegation of control to cities over their television systems expressed in the cited statutes makes the court's

---

[148] Ibid., p.3.

[149] Paragould Cablevision, Inc. v. City of Paragould and Paragould Light and Water Commission, Order, J-C 90-14.
Paragould Cablevision, Inc. v. City of Paragould and Paragould Light and Water Commission 739 F. Supp. 1314 [1990] (E.D. Ark.)

[150] Order, p. 13. Citation omitted.

finding of immunity for the city and its Light and Water Commission relatively straightforward."[151]

The court next considered the charges made by PCI against the city and CLW in Count II of the complaint. The court noted that PCI's claim that the franchise agreement provision in question effectively placed a restriction on all advertising by the company was "a considerable leap." The court found that the relevant sections of the franchise agreement were contractual in nature and did not have the effect of "regulating speech of any kind."[152] Because of the contractual nature of the franchise agreement between the city and PCI, the court also found that the absence of a similar provision in the city's agreement with CLW was not a violation of the equal protection clause of the Fourteenth Amendment. The court also noted that the absence of the provision in CLW's franchise agreement was not a discriminatory media tax. "Contract modifications do not automatically become tax questions merely because one party is a political subdivision with taxing authority."[153]

The District Court's finding that the franchise agreement between the City of Paragould and PCI was a

[151] Ibid., p.14.

[152] Ibid., p. 17.

[153] Ibid., p. 18.

contract was similar to the finding of the Court of Appeals in the Niceville case.[154] That court noted,

> Warner's argument that its franchise subjects it to "pervasive regulation" by the City trades on the implication that "regulation" by one party to which the other contracting party agrees constitutes adjudication. . . In this case however, the franchise is a contract between Warner and the City.[155]

The ruling of the District Court was subsequently upheld.[156]

In commenting on both the state and federal cases, Hamilton and Thompson pointed to the importance of having the 1987 Arkansas statute in place. In discussing the state action immunity doctrine, Thompson stated that the doctrine does not automatically apply to cities.

> You've got to determine if the activity the city is engaging in is forwarding a state policy. The 1987 Arkansas Act that we specifically got passed to authorize city ownership of cable systems was state action and the City of Paragould was engaging in activity forwarding that state policy.[157]

While the 1992 Cable Act specifically permits municipal authorities to operate cable systems,[158] whether those systems would be granted immunity under the state action

---

[154] Warner Cable Communications v. City of Niceville, op. cit.

[155] Ibid., p. 640.

[156] Paragould Cablevision, Inc. v. City of Paragould, Arkansas 930 F. 2d 1310 [1991] (8th Cir.)

[157] Thompson statement.

[158] Cable Act, of 1992, Sec. 7 (c)(2)(f)(1).

doctrine is unclear. For that reason, the enactment of statutes like that in place in Arkansas may still be critical.

In addition to engaging in litigation, there are other tactics used by incumbent operators to delay the construction of an overbuild. These include allegations of safety violations in pole attachments. In the case of Paragould, the city knew that Cablevision had hired an engineer to inspect the system and that he had found some violations. According to Hamilton, what PCI didn't know was "while we were stringing the system, every violation we found of theirs, we logged. We knew we made some mistakes--not very many--but some."[159] Hamilton said that as part of its strategy to fend off attacks by PCI, the city approached PCI and suggested that each side appoint technical and legal representatives to inspect the system with each side responsible for correcting any violations that might be found. "We never heard another word from them because they knew they had many more mistakes and violations than we did."[160] Brinkley has said "we knew from the beginning we couldn't make any mistakes, couldn't fudge on any rules because if we did someone would notice."[161]

---

[159] Hamilton interview.

[160] Ibid.

[161] Brinkley, Paragould interview.

Issues Associated with Municipal Ownership

Although most of the issues associated with the municipal ownership of a cable television system in competition with a private operator, were addressed in the litigation discussed above, there are some that were not. Perhaps the most significant of these is the issue of cross-subsidization.

The term cross-subsidization refers to the ability of a firm to subsidize losses from one operation with profits from another. The term is most frequently used in cases where the firm in question operates in both regulated and unregulated markets. A typical example is the use of revenues from local telephone service to subsidize data services. In the case of Paragould Light and Water, it could be argued that the opportunity was there for CLW to subsidize its cable operations with revenue from its electric utility.

In its feasibility study, CTIC cautioned the city to avoid any charges of cross-subsidization by requiring its cable operation to pay taxes and fees comparable to those paid by a private operator. The study also suggested that the city's cable system "pay full pro rata costs for any shared office space, staff, facilities and supplies."[162]

The city incorporated CTIC's suggestions in the 1986 ordinance which authorized CLW to construct and operate a

[162] CTIC, VI-3.

cable system and the amended 1989 franchise agreement between the city and CLW. Under that ordinance, CLW is required to

> pay to the City of Paragould, Arkansas General Fund, a fee equal to the annual franchise fee charged by the City of Paragould, Arkansas, to any private person, firm or corporation for the operation of a Cable Television System in the City of Paragould, Arkansas. Further, the Paragould Light and Water Commission shall pay the Paragould Light Department a fee equal to the pole attachment fee charged for the utilization of the Light Plant Department's electrical poles by any private person, firm or corporation.[163]

The franchise agreement required CLW to establish a new department which "shall have its sole function the provision of cable service."[164] The department must

> maintain its own separate books of account and share common costs with Grantee's utility operations on a reasonably allocated basis so as to ensure that the costs of providing cable service are not subsidized by utility rate payers.[165]

While cross-subsidization has not really been an issue in Paragould, the use of a property tax to support the city's cable operation has been. In the October, 1989 referendum, a small majority of voters approved the issuance of bonds, secured by an ad valorem tax of up to 6.5 mills, to finance the construction and operation of a city cable system. The tax was suspended in 1990 and 1991. In August, 1992 the city announced that it would be necessary to levy a

---

[163] Referred Ordinance, Section 5, June 17, 1986..

[164] Cable Television Franchise Agreement, 5.1, January 16, 1989.

[165] Ibid., 5.2.

tax of 2.786 mills to make up for City Cable's revenue shortfall and to meet the 1993 bond payments.[166]

The announcement was followed by a series of full page ads by PCI denouncing the tax and letters to the editor. In its ads PCI asked, "Do you remember when City Light and Water promised that City Cable would charge only $9.95 for service? So why is it $12.50?" and "Do you think it's fair to have to pay taxes for City Cable even if you don't have a tv set? They do."[167] The letters to the editor on the tax presented both sides of the issue. One echoed PCI's ads and stated that the people of Paragould were lied to and misled when told by Watson that City Cable would provide 40 channels for $9.95 and would break even with 3000 subscribers.[168] Another described the process whereby the tax came to be levied and put it in this perspective, "My added taxes won't cost me as much a year as I saved on my cable bill. . .And, I'm very happy with the service I get."[169] The writer also asked why the previous writer

---

[166] Gray, "Paragould to levy tax on cable tv system," <u>The Jonesboro Sun</u>, August 28, 1992, 1A and 2A.

[167] PCI ads, <u>The Paragould Daily Press</u>, August 26, and September 10, 1992.

[168] Rudy Ring, "City cable service built on empty promises, lies," Letter to the editor, <u>The Paragould Daily Press</u>, September 25, 1992.

[169] Opal Wood, "Voters answered cable question," Letter to the editor, <u>The Paragould Daily Press</u>, October 23, 1992.

didn't switch to City Cable. "If more people did, the tax wouldn't be levied."[170]

While one can argue that a majority of those who voted on it supported the bond issue referendum, there are some troubling aspects that remain. For example, the fact that the tax will be levied if revenues from City Cable operations are insufficient to meet its bond payments, may convince some people to subscribe who might not otherwise do so. It is also somewhat ironic that as a property owner, PCI has to pay a tax that benefits its competitor.

It can also be argued that the city's ability to issue bonds results in a lower cost of capital than would be available to a private operator. When asked about the fairness of this, Brinkley responded,

> Thank goodness for the American way. Yes, we'll be able to get it less than they would. Well, what's wrong with that. Well, you'll say, it's not fair because it's government money. I can understand that. But, they're (PCI) gonna get programming for a lot less that I'm going to have to pay for it. Each business has its own competitive advantage.[171]

Brinkley also noted that PCI would have lower costs associated with required technical tests because of its ability to borrow equipment and staff from other systems, as well as savings on vehicle purchases.

Hale countered that the city had other competitive advantages. For example, because it is part of CLW, when a

---

[170] Ibid.

[171] Brinkley, Paragould interview.

person moves or is new to town and needs to get utilities connected, they will be asked if they would also like to subscribe to City Cable. Additionally, City Cable's billing is done in conjunction with CLW's. A customer cannot pay only a portion of the bill. As a result, if a customer is delinquent on her cable, CLW can shut off not only the cable but the other utilities as well.[172] Hale said, " we have two or three documented cases of this occurring. We think that's unfair."[173]

Impact of Competition in Paragould

It has been said that the threat of competition will discipline the behavior of an incumbent cable operator. In Paragould that threat worked temporarily. When the results of the CTIC feasibility study were released in early 1986, Adams-Russell immediately announced the hiring of a local manager, took steps to improve customer service, eliminated deposits on converter boxes, admitted that the company had made mistakes, and began to address the city's concerns about its rates and channel offerings.[174] But, after two years, the disciplining effect of the threat of competition appeared to have worn off, the incumbent reverted to its old behavior and the City of Paragould reached the conclusion

---

[172] Hale interview.
When asked, Brinkley said that this was true.

[173] Ibid.

[174] Gray, June 6, 1988.
Zimmer letter, November 3, 1986.

that the only way it could really discipline PCI was by constructing a competing cable system.

Some would say that competition has resulted in significant benefits. According to Brinkley,

> the town of Paragould is paying out over one million less dollars a year than they were three years ago. The tax comes to $220,000. Even if you pay $80 more a year in taxes, you're still better off and service is better. Competition has led to lower prices, better service and more channels. Paragould wouldn't have public access or local origination channels without competition.[175]

There is some evidence to support Brinkley's statement. In December, 1990, PCI offered 40 channels of basic cable service for $14.50 per month. Premium services such as HBO, Showtime, the Movie Channel and Disney were $10.00 per month each. The company charged subscribers $3.00 per month for each additional cable outlet and $3.00 a month each remote control device. Once City Cable announced its rates, PCI dropped its charge for basic to $9.50 per month for those subscribers who had been with the company for two years or more. It also eliminated all fees for ancillary items and made HBO and Disney available for $5.00 and $3.00 per month. In a January 1, 1991 letter to the editor, one Paragould resident wrote, "Isn't it a shame that the city did not start a cablevision system years ago? Cablevision would

---

[175] Brinkley, Paragould interview.

have cut their prices a lot sooner."[176] Another asked people to "

> think back the last several years about the series of Cablevision rate increases when there was no threat of competition. They last raised the rate in September of 1990. They said the competitive threat had gotten their attention long ago, but still they continued to raise rates[177]

In August, 1992 Partlow said that he felt that the city had "ended up with two of the best cable systems in the United States because of the competition and that the people of Paragould had become the winners in the competition."[178]

Asked about the downside, Partlow stated, "you could make a case that neither company is making money."[179] Hale questioned whether the city had been saved the million dollars cited by Brinkley and also noted, that another downside to competition is its effect on cash flow and investment in new technology.

> When we lowered our rates, we gave up a big part of our cash flow. In turn it would be extremely difficult to invest in the system. There's a lot of new technology

---

[176] Jess Ivie, "City should have started cable system long time ago," Letter to the editor, The Paragould Daily Press, January 9, 1991.

[177] Wendell Rogers, "New city cable system needs support of citizens," Letter to the editor, The Paragould Daily Press, January 10, 1991.

[178] Charles Partlow quoted in Jennifer Gordon, "CBS focuses on local cable battle," The Paragould Daily Press, August 11, 1992, 1.

[179] Charles Partlow, Mayor, Paragould, Arkansas, videotaped statement, September 1992.

> out there on the rise in the industry. It would be extremely hard for us to invest in those.[180]

In February, 1993 it appeared that a temporary equilibrium had been reached. However, both PCI and City Cable appeared to be less than satisfied with the financial results of competition. According to National Cable Television Association data, the average monthly revenue per subscriber for cable systems in the United States at the end of 1992 was $25.47. Based on the franchise fee paid by PCI in 1991, its average monthly revenue per subscriber was $25.30. The trend for that revenue is presented in Table 6.

---

[180] Hale interview.

Table 6
Average Monthly Revenue Per Subscriber U. S. vs. Paragould

Year	U.S. Cable Systems[181]	PCI[182]	City Cable
1986	$19.77	$15.86	
1987	$20.97	$16.08	
1988	$22.22	$18.88	
1989	$23.67	$20.04	
1990	$25.69	$22.84	
1991	$27.20	$25.30	$17.68*
1992	$25.47	$16.59	$19.03[183]

*Seven months, June through December

In a June 1992 report to cable clients, the law firm Howard and Howard stated,

> The list of municipalities currently competing against private operators is very short . . .the list of municipal systems competing against private operators and making money is non-existent. The gap between municipal expectations and reality can be attributed to a number of factors. the most prevalent of which is flawed feasibility studies.[184]

---

[181] Cable Television Developments, 3-a and 8-a.

[182] All revenues based on estimated number of subscribers and extrapolation of franchise fees paid to the City of Paragould.

[183] The difference between the monthly per subscriber revenues of City Cable and PCI is primarily due to the fact that City Cable's subscriber fees for both basic and pay services are higher than those of PCI.

[184] Howard and Howard, Great Lakes Cable Law, June 1992, IV:2, 1.

Paragould is certainly a case in point. At the end of January, 1993, City Cable reported an operating loss of approximately $24,000; $20,000 of which was depreciation and interest expense. At least part of the problem stems from the CTIC feasibility study. Perhaps most surprising, considering the capital intense nature of cable television delivery, is the absence of depreciation expense in the CTIC report. Further, because CTIC assumed that the city would finance the system from its surplus, there was no consideration of interest expense.

In a November, 1987 memo to the City of Paragould, the accounting firm of Coy and Runyon noted, "an expense not considered in the proposed system but which could significantly influence cash flow and profits is the interest to be paid on the debt incurred to construct the system.[185] Representatives from PCI also criticized the CTIC study for underestimating construction costs.

In addition to the failure of the consultants to include depreciation and interest expense, Brinkley and Watson noted that there were other problems with the CTIC's financial projections. Brinkley said, when they estimated revenues, "They included remote control income, installation income, additional outlet income. Those were things that

---

[185] Dale E. Coy, Memo to the City of Paragould Regarding Cable Television System, November 6, 1987.

never happened."[186] In Paragould, the elimination of charges for these items has had a significant impact.

In a discussion of what the city did and did not anticipate with respect to competition, Watson also noted that all of the financial projections included revenues from ancillary items; installation charges of $15, $3.00 for each additional outlet and $3.00 for each remote control device. He said,

> While we assumed that hookup fees were going to go out the window, I didn't dream they'd start giving away as many outlets as you want or remote controls. That hurt us. One thing I didn't anticipate was . . . how <u>much</u> they would drop their rates.[187]

When asked about the future of cable competition in Paragould, Watson responded

> I think the 50/50 market split will last for a long time. At 50/50 neither one of us is making any money. . . . My feeling is people wouldn't want us to get all the market and drive the other company out of business. I think people want the competition to continue. . . . Cablevision will be here as long as they have one customer.[188]

On the last point at least, Hale would agree. "Cablevision is committed to this community. We're going to be here from now and always."[189] However, he added,

> I don't know about our competition. If you were to look at their financial statements, you would wonder. Can they continue to lose that kind of money year in

---

[186] Brinkley, Paragould interview.

[187] Watson interview.

[188] Ibid.

[189] Hale interview.

> and year out and not effect the city or the utility company in a dramatic fashion?[190]

Based on the responses of Watson and Hale one would predict that competition will continue in Paragould for the foreseeable future. Whether that is rational from an economic perspective is another question. But the relationship between the city and PCI has been an emotional one from the beginning. Commenting on the city's foray into the cable business Watson noted,

> They thought, we're from the Northeast and we're so smart and those people down here are all idiots. We'll just tell them how to run a system. All our people ever wanted was one time for some guy to holler "calf roped, you win; we're going to do what you want" and our people would have said, "that's fine, that's good. That's all we wanted. But we had a mayor who was very popular; was doing a good job and they snubbed him and our people didn't appreciate that. So, at the next city council meeting the mayor said, "I'm just going to have our local utility look at putting in a cable system." And, that's how we got started.[191]

---

[190] Ibid.

[191] Watson interview.

Chapter X
CONCLUSIONS

Through case studies of direct competition in cable television delivery in Montgomery, Alabama and Paragould, Arkansas, this dissertation has sought to answer the following research questions: 1.) Which of the market factors outlined in the literature as favoring competition exist in real world situations? Which of these factors are the most important? 2.) How does the political climate impact competition? 3.) What is the strategic interaction between competing firms? 4.) On what dimensions does competition occur? 5.) What is the effect of competition on consumers and 6.) Is competition likely to continue in the long run?

Market Characteristics

As detailed in Chapter VII, one would expect to find some combination of the market factors outlined below in a situation with direct competition between cable operators.

Those factors are:

1.) a high demand for cable, measured in terms of basic penetration.
2.) a population density of at least 90 homes per mile.
3.) less than a full complement of over the air broadcast television stations and/or the presence of UHF stations.
4.) terrain that makes over the air reception of television signals difficult.
5.) higher than average cable penetration.
6.) opportunities to increase penetration by successfully marketing both former subscribers and those who have never had cable.
7.) lower than average costs of cabling the community.
8.) lower than average median household incomes.[1]

Virtually all of the market characteristics cited above are present in both Montgomery and Paragould.[2] Because there were not large differences in the market characteristics of Montgomery and Paragould, one cannot judge the relative importance of those characteristics. While these cases certainly support the validity of market conditions thought to favor competition, they do not tell us whether cable overbuilds would be feasible under less favorable conditions. Additionally, there may be cities with market conditions that are as favorable as those found

---

[1] While one might expect the opposite to be true, in his studies of competition in the electric utility industry, Primeaux noted that areas with lower than average median household income were much more price sensitive, making competition especially attractive.

[2] Although Paragould with a density of 56 homes per mile is considerably below the threshold though necessary for competition to be feasible, the city's extremely high basic penetration appears to offset the lack of density.

in Montgomery and Paragould which are not overbuilt. The fact that at least in Montgomery and Paragould, it has been political factors and the strategic behavior of the players more than the presence of favorable market conditions that has influenced the viability of competition may help to explain the latter.

Political Factors

The key factor that influenced the entry by a second cable operator in Montgomery was the political clout wielded by Montgomery CableVision's Chairman and principal investor, Bill Blount. This clout enabled Blount to persuade the city council to expedite Montgomery CableVision's franchise application and to adopt ordinances that favored competition.

In Paragould, it was the inability of the city to resolve its disputes with the incumbent operator and the political momentum that was created once the city made it known that it was interested in building its own cable system that led it to enter the market in competition with a private operator. Additionally, in Paragould, the attorneys for the city and CLW persuaded the Arkansas legislature to adopt statutes specifically authorizing cities to own and operate cable systems and to issue bonds to finance their construction; drafted ordinances creating an independent entity charged with the responsibility of choosing the programming to be offered on the municipal system and clearly delineating what authority was delegated to CLW by the city council and what was not; and took steps to avoid allegations of cross-subsidization.

Strategic Behavior

Smiley has said that when examining the feasibility of competition in cable television delivery it is critical to consider the strategic interaction between firms. In particular, the entrant should anticipate that the incumbent will act to thwart competition.[3]

Litigation

In both Montgomery and Paragould a key strategy used by the incumbents was to engage in litigation. In Montgomery the litigation centered on the city's passage of ordinances prohibiting price discrimination and exclusive program contracts and the incumbent's a priori violation of the latter. That litigation remains unresolved.

In Paragould, the incumbent filed three civil suits against the entrant and the city. In all three instances, judgements were rendered quickly , significantly reducing the cost of the litigation. However, in Paragould as well as in Montgomery, there is some evidence that litigation was

---

[3] Smiley, "Direct Competition Among Cable Television Systems."

effective in delaying entry and chilling the ability of the entrant to obtain financing.

Miscellaneous Delaying Tactics

In Montgomery, the incumbent tried to persuade city council to make a "thorough analysis" of the situation before acting on Montgomery CableVision's franchise application. Storer also attempted to convince city council that an overbuild was not economically viable and would not result in sustained competition.

Once the franchise was granted, Montgomery CableVision encountered some resistance as it attempted to attach its lines to utility poles owned by South Central Bell. It also experienced a situation similar to that faced by City Cable in Paragould as it attempted to install its first customers.

In Paragould the city anticipated that in an effort to delay the construction of the city's system, PCI would allege that there were violations of federal safety standards. As a result, as it built its system, the city kept track of safety violations made by PCI. Donis Hamilton, attorney for CLW, stated that the city caught PCI off guard when it suggested that each side appoint technical and legal experts to inspect the two systems, with each side responsible for correcting its violations and, "we never heard another word about it."

Litigation and other delaying tactics are typically used by an incumbent prior to actual entry by a rival. Once that entry has taken place, and the firms are competing for subscribers, the strategic interaction changes. Each player begins to concentrate on differentiating his/her product in terms of price, customer service and to some degree, program offerings.

Price Competition

Smiley noted that when considering entry into a cable television market, the potential entrant should anticipate that the incumbent will reduce its price to meet the competitive challenge. Hazlett and Consumers' Research found evidence of selective price cutting in areas where there was direct competition. There have not been price wars per se in either Montgomery or Paragould primarily because in both markets the entrant realized that to participate in a price war would be self-destructive. Additionally, in Montgomery, the incumbent, Storer, had its experience with an overbuilder in nearby Troy to rely on, so it too recognized that engaging its rival in a price war would not be worth the effort. As result, in both markets, the established price for basic and premium services purchased on an a la carte basis have remained unchanged from their immediate post-competitive levels. But, in both markets post-competitive prices are significantly below pre-competitive levels and the industry average, strongly suggesting that price competition has indeed taken place.

Additionally, in both markets, but particularly in Paragould, aggressive marketing has also been used to attract and retain subscribers. Particular attention is paid to packaging and selling pay services. There is an important distinction between packaged pay and basic services. As basic service continues to become more of a necessity than a luxury, it is less price elastic. But, the same cannot be said for premium services. They remain more price elastic. Therefore, it may be possible for healthy competition to occur between rival cable operators in terms of how premium services are packaged, priced and marketed.

Customer Service

In both Montgomery and Paragould, customer service has been a way for the entrant to differentiate itself from the incumbent. In Montgomery, subscriber complaints about Storer focused on service outages and the inability to get a response from company representatives, particularly during those outages. Recognizing this as one of its competitor's shortcomings, Montgomery CableVision from the start made an effort to provide good customer service. In Paragould, product differentiation in customer service areas takes place with regard to response to complaints, convenience of installation and general system reliability.

Program Offerings

In an effort to support "the development of competition and diversity in video programming distribution", the Cable Act of 1992 contains a lengthy section which contains what has become known as the "program access requirements".[4] These requirements essentially prohibit providers of satellite-delivered programming who are owned, at least in part, by cable operators from entering into exclusive contracts with those operators. This prohibition was adopted in recognition of the fact that access to programming is critical to the success of multichannel video providers, particularly those who compete with established cable operators.

In Montgomery and Paragould, access to programming has been achieved with varying levels of success. As discussed in Chapter VIII, in Montgomery, the city and Montgomery CableVision continue to be involved in litigation concerning Storer's exclusive contracts with ESPN for Sunday Night NFL football, and TNT. In Paragould, despite some initial problems obtaining Cardinals' Baseball and TNN (The Nashville Network), City Cable now offers a full slate of programming with the exception of ESPN's Sunday Night football package.

---

[4] Cable Act of 1992, Section 628.

Because subscribers expect satellite-delivered channels such as TNT, ESPN and CNN to be provided as part of their basic cable service, it is difficult if not impossible for a cable operator to differentiate himself from the competition in terms of these program offerings. However, an operator can differentiate his product in other ways, the most obvious of which is to provide local programming as Storer does in Montgomery and City Cable does in Paragould.

Impact of Competition

It was stated at the beginning of Chapter III that the industrial organization model looks at how market structure impacts a firm's conduct and performance. Under this model, the expectations are that price will be lower, service better, and consumer welfare improved in competitive versus monopolistic situations. This certainly appears to be the case in Montgomery, Alabama and Paragould, Arkansas. In Montgomery, prices for basic cable service dropped by seven percent from their pre-competitive level once Montgomery CableVision actually entered the market. At the same time, subscribers saw an increase in the number of channels provided as part of basic and an improvement in customer service. Hence, ther has been an increase in the overall customer value of cable service.

In Paragould the price for basic cable service for most subscribers dropped by more than 20 percent from the pre-competitive level. At the same time, the number of channels offered increased by 35 percent from 40 to 54 and overall service improved as it did in Montgomery.

Additionally, competition has led to technological improvements in both cities. Although Richard Hale, General Manager of Paragould Cablevision, argues that because cash flow is less than what it was prior to competition, his company's ability to invest in emerging technologies has been negatively affected, it would appear that the opposite is true. Even with diminished cash flow, the company cannot, under competitive pressures, afford to lag in technological development. If it does, City Cable will gain a significant advantage if for no other reason than the age difference between the two systems. It should also be noted that it wasn't until the incumbent was threatened with competition that it undertook to upgrade and modernize its physical plant.

In Montgomery, Storer had already announced plans to upgrade its system when Montgomery CableVision entered the market. While conceding that competition may have expedited the process, Gilbert has said that it didn't really affect the company's technical plans. To him, the ability of the players to invest in their plants and deploy new technologies as they become available will significantly affect competition in the long run.

Outlook for Competition

A key question that remains unanswered is how sustainable in the long run is the competition that currently exists in Montgomery and Paragould? Although it is too soon to know for sure, some assessments can be made.

Historically cities granted exclusive franchises because of the belief that cable delivery in local markets is a natural monopoly. The natural monopoly status of cable was derived primarily from the assumption that because of high fixed costs, there were economies of scale that could only be achieved through a single producer. However, there is much more to establishing that an industry is a natural monopoly than simple economies of scale. As the theory of natural monopoly evolved, economists like Sharkey and Hazlett posited that subadditivity was more critical than economies of scale as a measure of the presence of a natural monopoly. Subadditivity is said to occur when a single firm can produce at a lower cost than any combination of two or more firms. If that is the case, because of the high costs paid by large operators to acquire cable systems in the 1980s, in cable television, the low-cost provider may be the second entrant rather than the incumbent. Montgomery CableVision's Rice presented the issue this way:

> Big cable likes to demonstrate that it's the low-cost provider. The one thing they don't toss into the mix in any of the studies you see. . .They don't throw in

> what they paid for their cable system. If you look at the proformulas from the standpoint of who's the low cost provider, they're amortizing debt on $2800 a sub that they 100 percent financed in 1987 in the glory years. . . While our cost per sub is in the range of $600. So, I may be the low-cost provider. At least that offsets the economies they derive from programming and so forth.[5]

> City Cable's Brinkley concurred.

> If you look at any of the financials of a cable company in a small town, the financial statement they supply to the city. . . will say that the cable company lost $100,000 in the last year. . . and the number one reason is their debt service; . . .you don't pay $2300 per subscriber for a system in a small town and borrow the money and then expect it to pay for itself.[6]

Whether or not a market is a natural monopoly also depends on the sustainability and contestability of that market structure. Baumol, et. al. have suggested that if a natural monopolist is not operating in an efficient manner and/or is achieving supernormal profits, the monopoly will not be sustainable.[7]

Although it is impossible to establish the precise profit achieved by the incumbent in either Montgomery or Paragould, it can certainly be argued that those profits were above normal and the monopolies unsustainable.

---

[5] Rice interview.

[6] Brinkley interview.

[7] Baumol, et. al., op. cit.
For a more detailed discussion of sustainability, see p. 12.

While cable television delivery may have legitimately been considered to be a natural monopoly when the industry was in its infancy, technological change has altered many of the natural monopoly arguments. Additionally, the relationship between fixed and variable costs has changed and revenues have increased making it easier for operators to cover capital costs.

As the competitive situations evolve in Montgomery and Paragould, the relationships between the parties are likely to change. In Paragould and parts of Montgomery, there has been a transition from a monopoly to a duopoly. Because both cities are still in the early stages of that transition, the incumbent and the entrant behave as fierce rivals although equilibria have been reached. As they become more accustomed to coexisting there is the possibility that the rivals will begin to behave more like oligopolists, particularly with respect to price.

In an oligopoly if one firm decreases its price, it is likely that rival firm(s) will do the same. If however, a firm increases its price, its rivals may not do the same. The demand curve for the oligopolist's product is much less elastic for price decreases than for price increases.[8] As a result, there is a strong incentive for oligopolists to

---

[8] Mansfield, op. cit., pp. 262-266.

reach an agreement on price. Because antitrust laws generally forbid outright collusion and price fixing, oligopolists frequently resort to price leadership as a method of coordinating their behavior. With price leadership, one firm sets the price and the other(s) follow. In both Montgomery and Paragould, once the entrant had announced its price, the incumbent followed by lowering its price. In Montgomery, Storer lowered its price to the level announced by Montgomery CableVision. In Paragould, PCI lowered its price to at least $1 and in many cases $3 below City Cable's. In the future it is likely that the incumbent will take the lead and increase price giving the entrant the leeway to do the same. One could certainly make the case that if the firms in Montgomery and Paragould begin to behave more like oligopolists than competitors, then consumers will be not much better off than they were without competition. However, the presence of even one rival tends to depress prices below what they would be under a monopoly while providing subscribers with better service, more programming options and improved technology.

In the long run, reason would dictate that the firms in both cities behave like oligopolists and restrict competition to nonprice dimensions. However, there is some evidence that these firms are not entirely ruled by reason. In Paragould, both the city and PCI itself have said that

Cablevision will continue to compete despite the negative effect that competition has had on cash flow. This seemingly irrational approach is partly a result of the large sunk costs associated with building a cable system and partly the result of the emotional aspects of the rivalry between the two cable operators.

In Paragould, particularly, it appears that competition will continue for the foreseeable future. Competition in that market is likely to be sustained for a considerable period of time because of the ability of both operators to subsidize any losses of their cable systems from other profitable activities. In the city's case, it has the utility business. With respect to PCI, it is the fact its parent operates other systems where the rates are significantly higher than they are in Paragould. While competition is likely to continue in Paragould, it is also likely that the equilibrium that has been reached will not.

There are a number of scenarios that would lead to a period of disequilibrium. Some have greater validity than others. For example, the city may decide to launch another aggressive marketing campaign. Although this is somewhat unlikely in the near term because of the city's fear of antitrust litigation by PCI, that fear may be overwhelmed by a need to increase revenues. If the city were to undertake an aggressive marketing campaign and successfully attract large numbers of subscribers from PCI this could result in the city overtaking PCI in terms of market share and becoming the dominant firm. If this were to happen, PCI's parent may become less willing to support an unprofitable operation and may decide to sell the system.

Alternatively, it has been said that the city will be able to sustain its current level of losses for at least 25 years because its operation is backed by a tax on real and personal property.[9] However, if those losses increased to the point where the maximum millage was insufficient to cover them, the city would be forced to take some action, perhaps sell the system.

It is also likely that in the future there will be a change in Paragould's political leadership. Citizens may also become disenchanted with City Cable, particularly if it were to become the dominant firm, leading the city to take action.

Under another scenario, a third firm could offer to buy both systems and consolidate the operations. In fact, in early May, 1993 it was reported that Falcon/Capital Cable LP of St. Louis offered $4 million for City Cable. A spokesman

---

[9] It is ironic that because of the way the tax is structured, all property owners, including PCI, subsidize lower cable rates. As a result, both PCI and City Cable subscribers, approximately 93 percent of the households in Paragould, benefit.

for Falcon/Capital Cable said his company would also be interested in buying Paragould Cablevision. The city council declined Falcon's offer.[10]

In Montgomery, because Montgomery CableVision only competes in about 20 percent of the market, competition may be less sustainable than in Paragould. Certainly, there is the stronger likelihood of a buyout. But, a buyout is far from an inevitability. Rice and Blount both argue that they are in the cable business in Montgomery to stay. Additionally, if the courts in the pending litigation find in favor of Montgomery CableVision, the company's ability to attract capital will be significantly enhanced. This would enable it to expand and compete more fully with Storer. If however, Storer wins the suit and/or begins to lay fiber and increase its channel capacity, it will be more difficult for Montgomery CableVision to survive.

In any case, because the ultimate outcomes in Montgomery and Paragould are unknown, the wisest course is to let things play out as they will. If that means that one entrepreneur wins out over the other, even if that entrepreneur is the City of Paragould, so be it. Hazlett has argued that "the notion that cable suppliers should be protected by public agencies from giving their fortunes to

---

[10] Phil Herget, letter to author, May 18, 1993.

consumers in the form of over-investment--and the resultant low prices is uncompelling."[11]

It is important to emphasize that the viability of competition in both Montgomery and Paragould is largely dependent upon political factors and the strategic interactions of the players rather than on the structural characteristics of cable television delivery itself. In both markets under monopoly conditions there was poor performance and once the political hurdles were overcome, there remained no significant cost barriers to entry.

Further Research

If the Montgomery and Paragould cases are any indication, competition results in significant consumer welfare benefits including decreased prices, improved service, more programming options and improved technologies. Because of this, Congress was well advised to strongly encourage competition as it did with the 1992 Cable Act. As the Federal Communications Commission begins its rulemaking with respect to placing ownership limits on cable operators as part of the 1992 Act, it should take into account the fact that a key part of competitive strategy in cable television, at least in Montgomery, Alabama and Paragould, Arkansas has been for the incumbent to engage the would-be

---

[11] Hazlett, "Cable Television Franchising," p. 8.

entrant in litigation as way of delaying entry and chilling financing. Because it is large cable operators who are most likely to have the resources and expertise necessary to execute this strategy and to sustain the decreases in cash flow that result from price cutting once entry has occurred, the FCC should make sure that the ownership rules it promulgates have teeth and as few loopholes as possible.

Although the 1992 Cable Act strongly encourages competition, questions remain about the likely sources of that competition. Based on the Paragould example, one could argue that the cities can provide some level of competition. However, critics such as PCI's Hale would assert that cities' entry into the cable business, "diverts their attention from their primary responsibility of maintaining fire, police protection, streets, parks and all those things you usually see cities do and provide to the community."[12]

In addition to those mentioned by Hale, there are many issues associated with municipal ownership. As noted in Chapter IX, the Paragould example is a primer on most of those issues. They include charges of improper delegation of authority by the city to the cable entity, the perception that a tax levied to support the system would constitute an illegal exaction, anti-trust problems, particularly when a

---

[12] Hale interview.

city owns and controls the utility poles on which the competing cable operator must run its lines, lack of expertise in operating a cable system, conflict of interest stemming from the city's dual role as regulator and competitor, and the possible politicization of programming.

But, there are safeguards against most of the above and one solution is to follow the Paragould example and take the issue to the voters. City Cable's Brinkley would argue, "make them your investors."

This dissertation has taken the case study approach to study some of the issues associated with direct competition in cable television delivery. Some of the insights provided here can be used to assess the feasibility of competition in markets other than Montgomery, Alabama and Paragould, Arkansas. But, more case studies would illuminate the issues even further.

The case studies presented in this dissertation do not tell us whether cable overbuilds would be feasible in cities where the market conditions are less favorable than those found in Montgomery and Paragould. Therefore, the development of an empirical model that would assess that feasibility seems like a logical next step. Such a model would have a binary dependent variable, overbuild/no overbuild. Because the Montgomery and Paragould case studies assert that political factors and the strategic interaction of firms strongly influence the viability of competition, at least in these markets, an empirical model should test the relative importance of market conditions, political factors and strategic behavior. To do so the model should include not only independent variables for the market conditions reported in this dissertation from other studies, but also variables related to political factors discovered in the case studies. For example, the size of an incumbent in terms of the number of total subscribers and a tally of lawsuits in which the incumbent had been engaged could be used to determine the likelihood of the firm employing tactics to thwart entry. The length of time in months that passed from when an overbuild was proposed until a franchise was granted could serve as a proxy for the political potency of the competitor. It also appears that local vs. non-local ownership affects the likelihood of an overbuild and should be included as a variable.

Further empirical studies examining the longevity of competing cable operations in overbuilt markets would help answer questions about the sustainability of competition. One might use the length of time a mayor has served as a measure of political stability, an important independent variable. The market shares of the firms, their per subcriber revenues, whether the firms are multiple system operators and their overall size in terms of number of subscribers should also be included as variables.

That the incumbent has a significant advantage over would-be entrants is quite apparent. Much of that advantage may be tied to being the first in the market. Research could be designed to study the extent of this first-mover advantage. It also appears that consumer inertia is an unquantified barrier to entry that bears directly on the viability of competition. This is another area ripe for study.

While much has been said about the consumer welfare benefits that result from competition, to date, no one has asked the subscribers in cities with competing cable systems if they do in fact perceive those benefits. Surveys of these subscribers would help to clarify the amount and type of benefits attained.

It will also be important to monitor the effects that the pro-competition provisions of the 1992 Cable Act have on competition in cable television delivery in local markets. If a long enough span of time were used in the empirical models outlined above, the models could help to assess the efficacy of the 1992 Act in promoting competition.

Finally, in Paragould, Arkansas, the court found that the city was immune from anti-trust liability under the state action doctrine. However, there remain unresolved questions on this issue. Further research could be done with scholars examining the differences between legitimate competitive advantages that cities enjoy when they compete with private operators and anticompetitive behavior. It does not seem proper that cities be granted immunity from the latter simply under the rubric of state action.

APPENDICES

APPENDIX A
Communities with Competing Cable Systems

Communities with Competing Cable Systems

Location	Operator	Number of Subs
Huntsville, AL	Cable America Corp.	17,985
	Comcast Cablevision	36,851
	Multivision Cable	4,701
Montgomery, AL	Montgomery Cablevision	3,767
	Storer/TCI	NA
Troy, AL	Troy Cablevision	775
	Storer/TCI	3,503
Mesa, AZ	Cable America Corp.	5,358
	Dimension Cable Service (Times-Mirror)	36,566
Chino Hills, CA	DCA Cablevision	900
	Chino Valley Cable TV	6,000
Menlo Park, CA	Matrix Cablevision, Inc.	NA
Palo Alto, CA	Cable Communications Corp. of Palo Alto	19,000
Pasadena, CA	Choice TV	90,000
	KTS Corp.	1,389
Sacramento, CA	Sacramento Cable (Scripps-Howard)	198,000
	Pacific West	90
San Diego, CA	Southwestern Cable (ATC)	151,304
Carlsbad, CA (San Diego cnty.)	Daniels Cablevision	45,518
	Cox Cable San Diego	321,956
Ventura, CA	Ave. TV Cable Service, Inc.	10,700
	Century Cable of Northern California, Inc.	6,900
Cape Coral, FL	Telesat	NA
	Cablevision of Cape Coral (Cablevision Industries)	25,227
Delray Beach, FL	Leadership Cablevision	34,857
	Sunbelt Dentronics	5,884
Deland, FL	Cablevision Industries	18,635

Location	Operator	Number of Subs
Deltona, FL	Telesat	4,200
Hillsborough Cnty., FL	Cablevision Industries	11,128
	Telesat	NA
	Paragon Communications	114,000*
Orange Cnty., FL	Orcable Ltd. (Cablevision Industries)	28,200
	Telesat	NA
Columbus, GA	American Cable	NA
	TCI	15,855
	Telecable	26,916
Valdosta, GA	TCI	16,813
	Falcon Cable	NA
Vidalia, GA	TCI	3,696
	Southland Cablevision	2,419
Rantoul, IL	Jones Intercable	1,895
	Specchio Pay TV	NA
Brazil, IN	Cable Brazil, Inc.	5,655
Terre Haute, IN	ATC	25,600
Frankfort, KY	Community Cable	11,336**
	Consolidated TV	4,000
Glasgow, KY	Glasgow Electric Plant Board	1,158**
	TeleScripps	5,180
Inez, KY	Triax Cablevision	2,239
	Kentucky Cable	721
Anne Arundel Cnty., MD	Acton	40,768
	Jones Intercable	40,340
Annapolis, MD	United/TCI	20,000
Marshall, MI	Americable	NA
	Triad Communications	1,100
Monroe, MI	Monroe Cablevision	8,300
	River Raisin	9,600
Negaunee, MI	Bresnan Communications	NA
	Negaunee Cable TV	NA**
Water Valley, MS	Multivision	1,058
	Futurevision	950

Location	Operator	Number of Subs
Rockport, MO	Great Plains Cable	224
Tarkio, MO	Heritage	1,551
Bennington, NE	Cable USA	142
Omaha, NE	Cox Cable	80,441
Sarpy Cty., NE	United/TCI	30,900*
Waldport, OR	Alsea River Cable	905
Yachats, OR	TCI	2,013
Allentown, PA	Service Electric Cable	75,000
	Twin County Cable	50,167
Pottsville, PA	Time-Warner Cable	15,312
	Wire Teleview	1,625
Jamestown, TN	Jamestown City	NA
Wartburg, TN	Big South Fork	8,735**
Carrollton, TX	Storer/TCI	16,214
	Harron Cable TV	7,500
Draper, UT	TCI	8,714
Salt Lake City, UT	TCI	49,128
Sandy, UT	Insight	22,200
Hampton Rds., VA	Cox Cable	174,817
Virginia Beach, VA	Virginia Beach Cable	NA
Loudoun Cnty., VA	Adelphia	10,200
Purcellville, VA	Mid-Atlantic	910
Hurtisford, WI	Jones Cablevision	23,961
West Bend, WI	Star Cablevision	8,517

* In Hillsborough County, Florida, Telesat competes with Cablevision Industries. There is no overlapping of Cablevision and Paragon territories. In Bennington/Sarpy County, Nebraska, Cable USA competes with Cox. There is no overlapping of Cox and United/TCI territories.

** Indicates a municipal overbuild.

Source: 1991 Television/Cable Factbook and 1990 Cable TV Franchising, Paul Kagan and Associates, Inc.

APPENDIX B
Original List of Communities with Competing Cable Systems

Original List of Communities with Competing Cable Systems

Location	Operator
Gulf Beach, AL	Multivision Gulf Coast Cable
Huntsville, AL	Comcast Cable America
Madison County, AL	Multivision Cable America
Troy, AL	Storer/TCI Troy Cablevision
Mesa, AZ	Times-Mirror Cable America
Chino Hills, CA	DCA Cablevision United/TCI
Chula Vista, CA (San Diego, County)	Cox Cable Ultronics
Menlo Park, CA	TCI Cable Co-op
Oceanside, CA (Pasadena)	Times-Mirror Daniels
Sacramento, CA	Pacific West Cable Scripps-Howard
Ventura, CA	Avenue TV Cable Century Cable
Altamonte Springs, FL	ATC Storer/TCI
Cape Coral, FL	Cablevision Industries Telesat
Citrus County, FL	ATC Telesat
Dade County, FL	Adelphia Cable Rifkin
Delray Beach, FL	Leadership Cable National Cable

Location	Operator
Deltona, FL	Cablevision Industries Telesat
Hillsborough County, FL	Paragon Cable Cablevision Industries Telesat
Inverness, FL	ATC Telesat
Jupiter, FL	Adelphia Comcast
Ocoee, FL	Cablevision Industries Telesat
Orange County, FL	ATC Cablevision Industries
Osceloa, FL	ATC Telesat
Pasco County, FL	Florida Satellite Network Telesat
Volusia County, FL	Cablevision Industries Telesat
Zephyrhillis, FL	Moffatt Communications Telesat
Athens, GA	TCI Southland Cable
Brunswick, GA	Rentavision Star Cable
Columbus, GA	Telecable American Cable
Gwinnett County, GA (Valdosta)	Rifkin American Cable Wometco Cable USA
Lyons, GA	TCI Southland Cablevision
Macon, GA	Cox Cable Suburban Cable

Location	Operator
Vidalia, GA	TCI Southland Cablevision
Warner Robins AFB	Cox Cable Watson Communications
Rantoul, IL	Jones Intercable People's Choice TV
Hebron, IN	US Cable Northwest Indiana Cable
Terre Haute, IN	ATC Omega Satellite
Boone County, KY	Storer/TCI Jacor
Frankfort, KY	Community Cablevision Consolidated TV Cable
Glasgow, KY	TeleScripps Glasgow EPB
Inez, KY	Triax USA Associates John Crum
Martin County, KY	Cable Systems USA Kentucky Cable TV
Anne Arundel County, MD	North Arundel Cable Jones Intercable
Marshall, MI	Triad Communications Americable International
Monroe, MI	Toledo Blade River Raisin Cable
Negaunee, MI	Bresnan Communications Negaunee Cable TV
Rockport, MO	Heritage Cable Effron Cable Investors
Houston, MS	Multivision Futurevision
Water Valley, MS	Multivision Futurevision

Location	Operator
Douglas County, NE	Metrovision Cox Cable Omaha
La Vista, NE	United Cable
Hillsdale/Paramus, NJ	Cablevision Systems UA Cable Systems
Allegheny County, NC	Multivision Allegheny Cable
Ashe County, NC	Multivision Ashe County Cable
Orange County, NC	Cablevision Industries Prime Cable
Waldport, OR	TCI Alsea River Cable
Allentown, PA	Twin County Trans-Video Service Electric
Easton, PA	Twin County Trans-Video Sammons
Pottsville, PA	Service Electric Time-Warner
Jamestown, TN	James Cable City of Jamestown
Carrollton, TX	Storer/TCI Planned Cable Systems
Sandy, UT	TCI Insight Cablevision
Loudoun County, VA	Benchmark Communications Mid-Atlantic Cable
Virginia Beach, VA	Cox Cable Resort Satellite
Polk Township, WI	Jones Intercable Star Cable

APPENDIX C
Paragould, Arkansas Ballot Question
June 17, 1986

Paragould, Arkansas Ballot Question
June 17, 1986

VOTE ON THE MEASURE BY PLACING AN "X" IN THE SQUARE OPPOSITE THE MEASURE EITHER FOR OR AGAINST:

FOR An ordinance authorizing the Paragould Light and Water Commission to Purchase, Acquire, Construct, Equip, Operate, Maintain and Extend a Community Antenna Television System, sometimes known as a cable television system, on a non-exclusive basis and establishing a Citizens Cable Television Advisory Committee.

AGAINST An ordinance authorizing the Paragould Light and Water Commission to Purchase, Acquire, Construct, Equip, Operate, Maintain and Extend a Community Antenna Television System, sometimes known as a cable television system, on a non-exclusive basis and establishing a Citizens Cable Television Advisory Committee.

APPENDIX D
Arkansas Code
Subchapter 6
Television Signal Distribution Systems

Arkansas Code
Subchapter 6
Television Signal Distribution Systems

14-199-601. Authority of municipalities generally - Non liable.

(a) Any first-class city, second-class city, and incorporated town may own, construct, acquire, purchase, maintain, and operate a television signal distribution for the purpose of receiving, transmitting, and distributing television impulses and television energy, including audio signals and transient visual images, to the inhabitants of the city or town and to the inhabitants of an area not to exceed two (2) miles outside the boundaries of the city or town.

(b) In no case shall a city or town be held liable for damages for failure to furnish or provide the service.

14-199-602. Appliances, fixtures, and equipment authorized.

The city or town may erect, construct, operate, repair and maintain in, upon, along, over, across, through, and under its streets, alleys, highways, and public grounds, poles, cross-arms, cables, wires, guy-wires, stubs, anchors, towers, antennas, pipes, connections, and other appliances, fixtures, and equipment necessary, expedient or useful in connection with a television signal distribution system.

Arkansas Code of 1987 Annotated, Volume 11, Charlottesville, Virginia: The Miche Company, 1991.

APPENDIX E
Arkansas Local Government Bond Act

Arkansas Local Government Bond Act

14-164-301. Title.

This subchapter shall be referred to and many be cited as the "Local Government Bond Act of 1985."

14-164-302. Legislative intent.

The people of the State of Arkansas by the adoption of Arkansas Constitution, Amendment 62 have expressed their intention to provide county and municipal governments expanded powers and authority with respect to the creation of bonded indebtedness for capital improvements of a public nature and the financing of facilities for the securing and developing of industry, and have empowered the General Assembly to define and prescribe certain matters with respect to the exercise of this power and authority. To that end this subchapter is adopted to enable the accomplishment and realization of the public purposes intended by Arkansas Constitution, Amendment 62 and is not intended to otherwise limit in any manner the exercise of the powers of counties and municipalities.

14-164-303. Definitions.

(2) "Capital improvements of a public nature" or "capital improvements" for the purposes of Arkansas Constitution, Amendment 62 and this subchapter means, whether obtained by purchase, lease, construction, reconstruction, restoration, improvement, alteration, repair, or other means:

(C) . . . facilities for the generation, transmission and distribution of television communications . . .

14-164-308. Bonds generally -- Authorizing ordinance.

Whenever a legislative body determines the need to issue bonds for capital improvement or industrial development purposes it shall authorize the issuance of the bonds by ordinance specifying the principal amount of bonds to be issued, the purpose or purposes for which the bonds are to be issued, and the maximum rate of any ad valorem tax to be levied and pledge to the retirement of the bonds.

14-164-309. Bonds generally --Election to authorize issuance.

(a) The question of the issuance of such bonds shall be submitted to the electors of the county or municipality at the general election or at a special election called for that purpose as provided in the ordinance and held in the manner provided in this subchapter.

(c) The ordinance shall set forth the form of the ballot question or questions, which shall include a statement for the purpose or purposes for which the bonds are to be issued and the maximum rate of any ad valorem tax to be levied for payment of bonded indebtedness.

Arkansas Code of 1987 Annotated, Vol 11, Title 14: Local Government, Charlottesville, Virginia: The Miche Company, 1987, 1991.

APPENDIX F
Paragould, Arkansas Ballot Question
October 31, 1989

Paragould, Arkansas Ballot Question
October 31, 1989

FOR The issuance of Capital Improvement Bonds of the City of Paragould in the principal amount of not to exceed $3,220,000 for the purpose of financing the cost of acquiring, constructing and equipping cable television facilities (secured by an ad valorem tax of 6.5 mills, collection of which shall be suspended as set forth below).........

AGAINST The issuance of Capital Improvement Bonds of the City of Paragould in the principal amount of not to exceed $3,220,000 for the purpose of financing the cost of acquiring, constructing and equipping cable television facilities (secured by an ad valorem tax of 6.5 mills, collection of which shall be suspended as set forth below).........

It is proposed to issue Capital Improvement Bond (the "Bonds) of the city of Paragould in the principal amount of not more than $3,220,000 under the provisions of Amendment No. 62 to the Constitution of the State of Arkansas for the purpose of financing the costs of acquiring, constructing and equipping cable television facilities. The Bonds will be in such form and contain such terms and conditions as directed by the City Council at the time of issuance of the Bonds. The Bonds will be secured by a pledge of the revenues derived form operation of the cable television facilities. The Bonds will be additionally secured by a tax of 6.5 mills on the dollar of the assessed value of the taxable real and personal property in the city of Paragould, but the tax will not be collected except in the event that and to the extent that revenues derived from the operation of the cable television facilities should prove to be insufficient to provide for or assure payment of the principal, premium, if any, or interest on the bonds, as due.

LIST OF REFERENCES

LIST OF REFERENCES

Articles and Papers

Alabama Journal. "Editorial." January 16, 1990.

Baldwin, T.F., C.L. Ono and S. Shrikhande, "Program Exclusivity in the Cable Television Industry," Journal of Media Economics, Fall 1991: .

Beutel, Phillip A. "City objectives in monopoly franchising: the case of cable television." Applied Economics 22 (1990): 1237-47.

Blau, Robert T. "To Franchise or Not to Franchise: Is That Really the Question?" Journal of Broadcasting and Electronic Media, 31:1 (Winter 1987): 95-101.

Bolich, Clint. "Cable Television an Unnatural Monopoly." Cato Institute Policy Analysis 34: March 13, 1984.

Broadcasting. "Storer Goes to Court over City Cable Rules." September 24, 1990: 24.

Burns, Conrad. "The Cable TV Problem--A Procompetitive Approach." Public Utilities Fortnightly, August 16, 1990: 16-19.

Carnevale, Mary Lu. "Congress Clears Cable TV Bill; Veto Expected." Wall Street Journal, 23 September 1992, 3 (A) and 4 (A).

__________."Bush's Veto of Cable Bill is Overturned." Wall Street Journal, 6 October 1992, 3 (A) and 6 (A).

Cohan, Thomas and William F. Squadron. "NATOA Survey Finds Soaring Cable Rates." Nation's Cities' Weekly, April 29, 1991: 1 and 11.

Congressional Digest. "Cable Television Regulation." 70:2 (February 1991): 33-41.

Consumers' Research. "Cable Could Compete." October 1982: 22-24.

Coursey, D., R. Mark Issac, and V.L Smith, "Natural Monopolies and Contested Markets: Some Experimental Results." The Journal of Law and Economics, 27 (April 1984): 91-113.

Cupp, Dorece. "Cablevision Shouldn't make subscribers add unwanted channels." The Paragould Daily Press, May 19, 1988: Letter to the editor.

Davis, Debra. "Cable Customers Reap Rewards from Price War." The Montgomery Advertiser, January 15, 1990: 3(A).

Dawson, Fred. "Cable Not a Natural Monopoly, But a Tough One." Multichannel News.

DeMent, Patrick. "Proposed city cable system, case of self-defeating, tax-supported mission." The Paragould Daily Press, October 27, 1989: Letter to the editor.

Demsetz, Harold. "Why Regulate Utilities?" Journal of Law and Economics, 11 (April 1968): 55-65.

Edge, Homer. "Which cable system are ads referring to?" The Paragould Daily Press, October 26, 1989: Letter to the editor.

Freeman, J. L. "Study Finds Profits Elusive When Two Systems Overbuild." Multichannel News April 13, 1987: 17 and 19.

Gerome, John. "Storer sues Montgomery over Cable TV ordinances." The Montgomery Advertiser, September 7, 1990: 1 (A) and 12 (A).

__________."CableVision joins city in lawsuit." The Montgomery Advertiser, November 29, 1990: 1 (B).

__________. "Apartment suit targets Storer Cable." The Montgomery Advertiser, May 2, 1991: 4 (B).

__________. "Mayor's wish to see Iron Bowl, Peter Pan at the same time brings cable TV to ASF." The Alabama Journal, December 4, 1991: 1 (A).

Gordon, Jennifer. "CBS focuses on local cable battle." The Paragould Daily Press, August 11, 1992: 1.

Gray, Stan. "Paragould Takes on Cable Co. at Polls." The Jonesboro (Arkansas) Sun, June 6, 1986: 1 (A).

__________. "Paragould voters to decide on cable question." The Jonesboro Sun, October 29, 1989: 1 (A) and 2 (A).

__________. "Paragould to levy tax on cable tv system." The Jonesboro Sun, August 28, 1992: 1 (A) and 2 (A).

Harmon, Rick. "Storer to add channels, lower prices." The Montgomery Advertiser, August 21, 1990: 1.

__________. "Gloves coming off in city's cable duel." The Montgomery Advertiser, January 29, 1991: 3 (C).

__________. "Cable Wars: Customers already the real winners." The Montgomery Advertiser, May 3, 1991: 1(D) and 4(D).

__________. "Sparring cable companies good news for subscribers." The Montgomery Advertiser, February 26, 1993: 9(C) and 18(C).

Haugsted, Linda. "Ops Won Overbuild Protection in Four States." Multichannel News December 26, 1988: 8 and 34.

Hayes, Elizabeth. "Storer files lawsuit to stop new city regulations." The Alabama Journal, September 7, 1990: 1(A).

Hazlett, Thomas W. "The Curious Evolution of Natural Monopoly Theory." In Unnatural Monopolies, ed. Robert W. Poole, Jr., 1-25. Lexington: Lexington Books, 1985.

__________. "Private Contracting versus Public Regulation as a Solution to the Natural Monopoly Problem." In Unnatural Monopolies, ed. Robert W. Poole, Jr., 71-114. Lexington: Lexington Books, 1985.

__________. "Private Monopoly and the Public Interest: An Economic Analysis of the Cable Television Franchise." University of Pennsylvania Law Review, 134: 1335-1409, 1986.

__________. "Competition vs. Franchise Monopoly in Cable Television." Contemporary Policy Issues, 4 (April 1986): 80-97.

__________. "The Policy of Exclusive Franchising in Cable Television." Journal of Broadcasting and Electronic Media, 31:1 (Winter 1987): 1-20.

__________. "Cabling America: Economic Forces in a Political World." In Freedom in Broadcasting, ed. Cento Veljanovski, 208-23. London: Institute of Economic Affairs, 1989.

__________. "Should Telephone Companies Provide Cable TV?" Regulation, Winter 1990: 72-80.

__________. "Duopolisitic Competition in Cable Television: Implications for Public Policy." Yale Journal on Regulation, 7:65 (1990): 65-119.

__________. "A Reply to Regulation and Competition in Cable Television." Yale Journal on Regulation, 7:65 (1990): 141-48.

__________. "The Demand to Regulate Franchise Monopoly: Evidence From CATV Rate Deregulation in California," Economic Inquiry, 29 (April 1991): 275-96.

Henderson, Michael J. "Municipal Ownership of Cable Television: Some Issues and Problems." Comm/Ent Law Journal, 3:4: 667-83.

Howard and Howard. Great Lakes Cable Law. 4:2 (June 1992): 1 and 6.

Ivie, Jess. "City should have started cable system long time ago." The Paragould Daily Press, January 9, 1991: Letter to the editor.

Jaffe, A. B. and Kanter, D. M. "Market power of local cable television franchises: evidence from the effects of deregulation." Rand Journal of Economics, 21:2 (Summer 1990): 226-34.

Jamison, Sylvia. "Voters to decide on cable on Tuesday." The Paragould (Arkansas) Daily Press, June 13, 1986: 1.

__________. "Voters back city cable tv system." The Paragould Daily Press, June 18, 1986: 1.

__________. "City Council delays decision on building a cable TV system." The Paragould Daily Press, December 15, 1987: 1.

Johnson, R. C. and R.T. Blau. "Single versus Multiple-System Cable Television." Journal of Broadcasting, 18:3 (Summer 1974): 323-46.

Kerver, Tom. "Genesis for Decision." CableVision, October 8, 1990: 64 and 66.

Knight, Sharon. "Residents express interest in sports, shopping channels." The Paragould Daily Press, January 19, 1990: 1.

_________. "City responds to cable suit." The Paragould Daily Press, February 1, 1990: 1.

_________. "Judge denies motion in latest cable suit; trial dates scheduled." The Paragould Daily Press, April 23, 1991: 1.

Lee, William E. "Cable Franchising and the First Amendment." Vanderbilt Law Review, 36:4 (May 1983): 867-928.

Levin, S. L. and J. B. Meisel. "Cable television and competition." Telecommunications Policy, December 1991: 519-28.

Levine, Daniel R. "Behind the Cable TV Rip-Off." Reader's Digest, June 1992: 53-57.

Lewyn, Mark and Julie Amparano Lopez. "More Choice for Cable TV?" Business Week, May 13, 1991: 42-45.

Mansell, John. "Overbuilds and redistricting." In Guide for Local Policy, ed. Nancy Jesuale, 41-47. Arlington, Virginia: Cable Television Information Center, 1982.

McCormack, Rusty. "Cablevision executive defends rates, rejects label of 'utility'." The Paragould Daily Press, October 13, 1989: Letter to the editor.

Meadows, Ellen. "Cablevision VP promises to keep customers." The Paragould Daily Press, November 13, 1990: 1.

Merelman, Stephen. "Storer manager says outages will continue." The Alabama Journal, October 25, 1990: 2(A).

_________. "CableVision joins city in defending cable competition ordinances." The Alabama Journal, November 29, 1990: 2(A).

_________. "Cable war heats up; Storer won't remove lines from apartments." The Alabama Journal, May 1, 1991: 1(A) and 8(A).

Merline, J. W., D. Davidson and E. Pierre. "How to Get Better Cable TV at Lower Prices." Consumers' Research, May 1990: 10-17.

Miller, Fred. "City Cable goes on line." The Paragould Daily Press, March 3, 1991: 1

Moore, Tom. "Cable Television Service: In the City . . .By the City," unpublished paper Arkansas State University, December, 1991.

Multichannel News. "Storer, ESPN Sue Montgomery Over Regulations." September 24, 1990: 59.

Noam, Eli M. "Local Distribution Monopolies in Cable Television and Telephone Service: the Scope for Competition." In Telecommunications Regulation Today and Tommorow, ed. Eli M. Noam, 348-65. New York: Law and Business, Inc., 1983.

_________. "Economies of Scale in Cable Television: A Multiproduct Analysis." In Video Media Competition, Regulation, Economics and Technology, ed. Eli M. Noam, 98-112. New York: Columbia University Press, 1985.

_________. "Towards and Integrated Communications Market: Overcoming the Local Monopoly of Cable Television." Federal Communications Law Journal, 34:2: 209-57.

Nadel, Mark S. "COMCAR: A Marketplace Cable Television Franchise Structure." Harvard Journal on Legislation, 20: 541-73.

Owen, Bruce M. and Peter R. Greenhalgh. "Competitive Considerations in Cable Television Franchising." Contemporary Policy Issues, 4 (April 1986): 69-79.

Paragould Daily Press. "Cable Firm: City would lose money." June 6, 1986: 1.

_________."Council's frustrations with cable company's attitude is understandable." June 8, 1988: Editorial.

_________. "Voters will consider city cable financing." October 29, 1989: 1.

_________. "Cable TV battle only beginning." November 1, 1989: Editorial.

_________. "Judge Releases findings in cable lawsuit." February 28, 1990: 1.

_________."Cablevision slashes rates." December 26, 1990: 1.

_________. "Cablevision sues City Cable over wiring dispute." March 13, 1991: 1.

_________. "Motion seeks dismissal of suit against City Cable." March 31, 1991: 1.

_________. "Company requests dismissal of lawsuit over wire." September 12, 1991: 1.

_________. "Cablevision wins award for second year in a row." March 25, 1992: 9.

Perkey, Don. "Cable tv company's claims of community commitment ring false." The Paragould Daily Press, October 12, 1989: Letter to the editor.

Posner, Richard A. "Natural Monopoly and Its Regulation." Stanford Law Review, 21 (February 1969): 548-643.

_________. "The appropriate scope of regulation in the cable television industry." Bell Journal of Economics and Management Science, (Spring 1972): 98-129.

Prager, Robin A. "Firm behavior in franchise monopoly markets." Rand Journal of Economics, 21:2 (Summer 1990): 211-25.

Primeaux, Walter J., Jr. "Some Problems with Natural Monopoly." The Antitrust Bulletin, (Spring 1979): 63-85.

Primeaux, W. J., Jr., J. E. Filer, R. S. Herren and D. R. Hollas. "Determinants of regulatory policies toward competition in the electric utility industry." Public Choice, 43 (1984): 173-86.

Primeaux, Walter J., Jr. "Estimate of the Price Effect of Competition." Resources and Energy 7 (1985): 325-40.

Rice, Jean. "Public Ownership Models." In Guide for Local Policy, ed. Nancy Jesuale, 48-56. Arlington, Virginia: Cable Television Information Center, 1982.

Ring, Rudy. "City cable service built on empty promises, lies." The Paragould Daily Press, September 25, 1992: Letter to the editor.

Roberts, Peggy. "Subscribers would win war over cable television." The Alabama Journal and The Montgomery Advertiser, January 29, 1990: 1(B) and 6(B).

Rogers, Wendell. "New city cable system needs support of citizens." The Paragould Daily Press, January 10, 1991: Letter to the editor.

Sloan, Kitty. "City Cable Committee Studies Programming." The Paragould Daily Press, December 21, 1989: 1 and 5.

_________. "Cablevision preparing for competition." The Paragould Daily Press, August 19, 1990: 1.

_________. "City Cable preparing for battle." The Paragould Daily Press, August 20, 1990: 1 and 3.

_________. "City Cable starts campaign to get 3000 subscribers." The Paragould Daily Press, July 17, 1991: 1.

Smiley, Albert K. "Direct Competition Among Cable Television Systems." EAG Discussion Paper 86-9 (June 5, 1986).

_________. "Regulation and Competition in Cable Television." Yale Journal on Regulation, 7:65 (1990): 121-39.

Stelzer, Irwin M. "The Economics of Cable Franchising," NERA, Inc., 1983.

Thompson, Lois. "Cable hike, policy ending basic service grossly unfair." The Paragould Daily Press, May 16, 1988: Letter to the editor.

Touche Ross and Company. Economic Analysis of Multi-Franchising Cable Television Operations in Maple Heights, Ohio. Portland (Oregon): September 16, 1982.

Upchurch, Jim. "Local 'David' Takes on Cable TV's Goliath." Montgomery City Magazine, 170: February 1, 1990: 8-14.

_________. "The Politics of Cable." Montgomery City Magazine, 170: February 1, 1990: 13-14.

Uttyebrouck, Olivier. "Mayor criticizes cable tv rate hike." The Paragould Daily Press, May 10, 1988: 1.

_________. "Municipal cable system back in picture." The Paragould Daily Press, May 24, 1988: 1.

__________. "CLW seeks election on bonds for cable." The Paragould Daily Press, July 19, 1989: 1.

Uttyebrouck, Olivier and Kitty Sloan. "Voters approve cable financing." The Paragould Daily Press, November 1, 1989: 1 and 3.

Wall Street Journal. "Florida Rival Bought Out." December 10, 1992: 10(A).

Waterson, Michael. "Recent Developments in the Theory of Natural Monopoly." Journal of Economic Surveys, 1:1 (1987): 59-80.

Williamson, Oliver E. "Franchise bidding for natural monopolies--in general and with respect to CATV." Bell Journal of Economics, 7:1 (Spring 1976): 73-104.

Wood, Opal. "Voters answered cable question." The Paragould Daily Press, October 23, 1992: Letter to the editor.

Zupan, Mark A. "The Efficacy of Franchise Bidding Schemes in the Case of Cable Television: Some Systematic Evidence." Journal of Law and Economics, 32 (October 1989): 401-56.

__________. "Non-price concessions and the effect of franchise bidding schemes on cable company costs." Applied Economics, 21 (1989): 305-23.

__________. "Cable franchise renewals: do incumbent firms behave opportunistically?" Rand Journal of Economics, 20:4 (Winter 1989): 473-82.

Books

Allen, Bruce T. Managerial Economics, 2d ed. New York: Harper and Row, 1988.

Baldwin, Thomas F. and D. Stevens McVoy, Cable Communication, 2d, Englewood Cliffs: Prentice Hall, Inc., 1988.

Baumol, William J., John C. Panzar and Robert D. Willig. Contestable Markets and the Theory of Industry Structure, New York: Harcourt, Brace, Jovanovich, Inc., 1982.

Brenner, Daniel L. and Monroe E. Price, Cable Television and Other Nonbroadcast Video, New York: Clark Boardman Company, Ltd., 1986.

Mansfield, Edwin. Principles of Microeconomics, 4th ed. New York: W. W. Norton and Company, 1983.

Porter, Michael. Competitive Strategy. New York: Free Press, 1980.

Pindyck, Robert S. and Daniel L. Rubinfeld, Microeconomics, New York: Macmillan Publishing Company, 1989.

Scherer, F. M. Industrial Market Structure and Economic Performance, Chicago: Rand McNally and Co., 1970.

Sharkey, William W. The Theory of Natural Monopoly, Cambridge: Cambridge University Press, 1982.

Webb, G. Kent. The Economics of Cable Television, Lexington: Lexington Books, 1983.

Court Cases

Berkshire Cablevision of Rhode Island v. Burke 571 F. Supp. 976 [1983].

Century Federal, Inc. v. City of Palo Alto, Cal. 648 F. Supp. 1465 [1986] (N.D. Cal.)

Central Telecommunications, Inc. v. TCI Cablevision, Inc. 610 F. Supp. 891 [1985] (D. C. MO.)

Community Communications Co. v. City of Boulder 630 F. 2d 704 [1980] (U. S. Court of Appeals 10th Circuit).

Greater Fremont, Inc. v. City of Fremont 302 F. Supp. 652 [1968].

Group W Cable, Inc. v. City of Santa Cruz 669 F. Supp. 954 [1987] (N.D. Cal.)

Omega Satellite Products Co. v. City of Indianapolis 694 F. 2d 119 [1982].

Pacific West Cable Company v. City of Sacramento, Cal. 672 F. Supp. 1322 [1987] (E.D. Cal).

Paragould Cablevision, Inc. v. City of Paragould, Arkansas and Paragould Light and Water Commission, Complaint, Civil Action No. 90-17, Greene County, Arkansas Chancery Court, January 18, 1990.

Paragould Cablevision, Inc. v. City of Paragould, Arkansas and Paragould Light and Water Commission, Separate answer of defendant, Civil Action No. 90-17, February 2, 1990.

Paragould Cablevision, Inc. v. City of Paragould, Arkansas and Paragould Light and Water Commission, Order, Civil Action No. 90-17, February 26, 1990.

Paragould Cablevision, Inc. v. City of Paragould, Arkansas and Paragould Light and Water Commission, Complaint, Civil Action No. J-C-90-14, E.D. Ark., January 29, 1990.

Paragould Cablevision, Inc. v. City of Paragould, Arkansas, et.al., Motion to Dismiss, Civil Action No. J-C-90-14, E.D. Ark., February 20, 1990.

Paragould Cablevision, Inc. v. City of Paragould, Ark. 739 F. Supp. 1314 [1990] (E.D. Ark.).

Paragould Cablevision, Inc. v. City of Paragould, Ark. 930 F. 2d 1310 [1991] (8th Cir.).

Preferred Communications, Inc. v. City of Los Angeles, Cal. 754 F. 2d 1396 [1985].

Quincy Cable TV, Inc. v. FCC 768 F. 2d 1434 [1985] (D. C. Cir.)

Red Lion Broadcasting, v. FCC 395 U. S. 367 [1969].

Tele-Communications of Key West v. U. S. 757 F. 2d 1330 [1985].

Warner Cable Communications v. City of Niceville 911 F. 2d 634 [1990] (11th Cir.).

Interviews

Blount, William B., Chairman, Montgomery CableVision and Entertainment, Inc. Interview by author, February 22, 1993, Montgomery. Tape recording.

Brinkley, Jack, Cable Superintendent, Paragould City Light, Water and Cable. Interview by author, February 17, 1993, Paragould. Tape recording.
Telephone interview by author, April 1, 1993, Lansing.

Buckalew, James, Executive Assistant to the Mayor, Montgomery, Alabama. Interview by author, February 25, 1993, Montgomery. Tape recording.

Cushing, Harry P. III, President and CEO of Telesat Cablevision, Inc. Telephone interview by author, September 1, 1992, Lansing.

Gilbert, Jack, General Manager, Storer Cable. Interview by author, February 24, 1993, Montgomery. Tape recording.
Telephone interview by author, April 27, 1993, Lansing.

Hale, Richard, General Manager, Paragould Cablevision, Inc. Interview by author, February 18, 1993, Paragould. Tape recording.

Hamilton, Donis, Attorney, Goodwin, Hamilton, Moore and Colbert, Paragould, Arkansas. Interview by author, February 17, 1993, Paragould. Tape recording.

Herget, Phil, Former member Paragould Cable Commission. Interview by author, February 19, 1993, Paragould. Tape recording.

McBride, Rick, Councillor, City of Montgomery, Alabama. Interview by author, February 24, 1993, Montgomery. Tape recording.

Merelman, Stephen. Reporter, Montgomery Advertiser/Journal. Interview by author, February 23, 1993, Montgomery. Tape recording.

Neely, Nick, Direct Sales Manager, Montgomery CableVision and Entertainment, Inc. Interview by author, February 23, 1993, Montgomery. Tape recording.

Partlow, Charles, Mayor, City of Paragould, Arkansas. Videotaped statement, September 1992.

Rice, Rush, President of Montgomery CableVision and Entertainment, Inc. Interview by author, February 22, 1993, Montgomery. Telephone interview by author August 31, 1992 and April 26, 1993, Lansing.

Thompson, Robert, Counsel for the City of Paragould, Arkansas. Videotaped statement, September 1992.

Watson, Larry, Manager, Paragould City Light, Water and Cable. Interview by author February 17, 1993, Paragould. Tape recording.

Public Documents

Arkansas. An Act to Authorize Cities and Towns to Own and Operate Television Signal Distribution Systems, March 1987.

Arkansas. Code of 1987 Annotated Volume 11, Charlottesville, Virginia: The Miche Company, 1991.

Cable Television Consumer Protection and Competition Act of 1992 U.S.C.A. Statutory Supplement, Public Law 102-385, St. Paul: West Publishing, December 1992.

Montgomery, Alabama. Ordinance 101-76, An Ordinance of the City of Montgomery, Alabama granting a franchise for the Construction, Acquisition, Operation and Maintenance of a Cable Television System within the City Limits of the City of Montgomery, Alabama to Montgomery Cable Television, Inc., October 19, 1976.

Montgomery, Alabama. Ordinance No. 9-90, An Ordinance to Amend Ordinance No. 50-76, an Ordinance of the City of Montgomery, Alabama Adopted June 22, 1976 Providing for the Construction, Operation, Regulation and Control of Cable Television Systems, January 16, 1990.

Montgomery, Alabama. Ordinance No. 16-90.

Montgomery CableVision and Entertainment, Inc. Franchise Application Submitted to the Montgomery City Council January 16, 1990.

Paragould, Arkansas. Cable Television Franchise Agreement Between the City of Paragould and Paragould Light and Water Commission, January 16, 1989.

Paragould, Arkansas. City Council Meeting Minutes, March 10, 1986, May 26, 1987, June 6, 1988, July 24, 1989, August 14, 1989, January 15, 1990, February 12, 1990, June 18, 1990 and December 10, 1990.

Paragould, Arkansas. An Ordinance Making Findings of Fact, Authorizing the Paragould Light and Water Commission to Purchase, Acquire, Construct, Equip, Operate, Maintain, and Extend a Community Antenna Television System, Sometimes known as a Cable Television System, on a Non-Exclusive Basis, Establishing a Citizen's Cable Television Advisory Committee and for Other Purposes, June 16, 1989.

Paragould, Arkansas. An Ordinance Calling for a Special Election on the Question of the Issuance of Bonds under Amendment No. 62 to the Arkansas Constitution for the Purpose of Financing the Construction of Cable Television Facilities in the City of Paragould, Arkansas; Declaring an Emergency; and Prescribing Other Matters Pertaining Thereto, July 24, 1989.

Paragould, Arkansas. Ordinance No. 90-10, An Ordinance Authorizing the Construction of Cable Television Facilities in the City of Paragould, Arkansas, Authorizing the Issuance of General Obligation Capital Improvement Bonds for the Purpose of Financing the Cost of Construction, Providing for the Payment of the Principal and Interest on the Bonds; Prescribing Various Matters Relating Thereto; and Declaring an Emergency, January 22, 1990.

Paragould, Arkansas. Ordinance No. 90-11, An Ordinance Amending Ordinance Referred to the People by Resolution No. 86-3 and Passed by Special Election Dated June 17, 1986; Declaring an Emergency and for Other Purposes, February 12, 1990.

Paragould, Arkansas. Ordinance No. 90-38, An Ordinance Establishing the Rates for the Sale and Distribution of Audio and Visual Television, Radio and other Signals and Related Services to be Furnished by the Municipal Cable Television System as Administered by the Paragould Light and Water Commission in Accordance with Referred Ordinance Adopted June 17, 1986, and Ordinance 90-11, Adopted February 12, 1990; Declaring an Emergency and for Other Purposes, December 10, 1990.

Paragould, Arkansas. Resolution No. 83-22, Resolution Authorizing the Mayor and the City Clerk to Execute Certain Cable TV Franchise Agreement with Paragould Cablevision, Inc., November 28, 1983.

Paragould, Arkansas. Resolution No. 87-5, A Resolution to Express the Desire of the City Council of the City of Paragould, Arkansas, that the Paragould City Light and Water Commission Pursue a Program to Establish a City-Owned Cable Television Facility, May 26, 1987.

Paragould Arkansas. Resolution No. 88-10, A Resolution Directing the Paragould Light and Water Commission to Proceed with the Acquisition, Construction, and Maintenance of an Extended Community Antenna Television System, also known as a Cable Television System for the City of Paragould, Arkansas, and for other purposes, June 6, 1988.

Storer Cable Communications. Petition to the City Council, City of Montgomery, Alabama, March 20, 1984.

U. S. Congress. Senate. Subcommittee on Antitrust, Monopolies and Business Rights of the Committee on the Judiciary. Competitive Issues in the Cable Television Industry: Hearings before the Subcommittee on Antitrust, Monopolies and Business Rights of the Committee on the Judiciary. 100th Cong., 2d Sess. 17 March 1988.

U.S. Congress. Senate. Committee on Commerce, Science and Transportation. Oversight of Cable Television: Hearings before the Committee on Commerce, Science and Transportation. 101st Cong., 1st Sess. 16 and 17 November 1989.

U. S. Congress. Senate. Committee on Commerce, Science and Transportation. Cable Television Consumer Protection Act of 1991: Report of the Committee on Commerce, Science and Transportation Together with Minority Views on S.12. 102nd Cong. 1st Sess., 1991.

Miscellaneous

Blount, William B., Montgomery CableVision and Entertainment, Inc., "Response to Storer Letter", March 6, 1990.

Blount, William B., Montgomery CableVision and Entertainment, Inc., "Memorandum to Mayor Emory Folmar and Council Re: Anti-Competitive Tactics of Major Cable Operators and Programmers," Montgomery, Alabama, August 1, 1990.

Cablevision Systems, Inc. Press release, January 18, 1990.

Cable Television Information Center Associates. Municipal Ownership of a Cable Television System in Paragould, Arkansas: A Feasibility Study. Alexandria, Virginia: Cable Television Information Center, February 1986.

Cable Television Factbook 1992.

Citizens for Home-Owned Cable. Newspaper ads, The Paragould Daily Press, October 26, 27,29 and 30, 1989.

Coy, Dale E., "Memo to the City of Paragould Regarding Cable Television System," November 6, 1987.

Ely, Bruce P. "Defending Against Overbuilds." Alabama Cable Television Association Annual Meeting, August 23, 1990.

Gilbert, Jack, Storer Cable Communications. "Letter to Lewis King, General Manager, Montgomery CableVision and Entertainment, Inc.", October 11, 1990.

Griffith, Charles. "Letter to Montgomery City Council," July 13, 1982.

Hamilton, Donis. "Letter to author," January 20, 1993.

Herget, Phil. "Cable Television Chronology," Unpublished document, 1993.

King, Lewis, Montgomery CableVision and Entertainment, Inc. "Response to Gilbert Letter," October 16, 1990.

Lawson, Thomas, Jr. "Statement to Montgomery City Council," January 16, 1990.

Little, Bill, Paragould Cablevision, Inc. "Letter to Mayor Charles Partlow, Paragould, Arkansas," April 29, 1988.

McBryde, Mark, Stevens, Inc. "Report to Paragould, Arkansas, General Obligation Capital Improvement Bonds, Information Regarding Bond Pricing," June 13, 1990.

Montgomery CableVision and Entertainment, Inc. Proposal for Tyson Square September 8, 1992.

Montgomery CableVision and Entertainment, Inc. Operating Projections 1993 through 1996, February 1993.

Montgomery CableVision and Entertainment, Inc. Rate Card, February 1993.

National Cable Television Association. The Recommended Standards for Customer Service as Adopted by the NCTA Board of Directors, July 1991.

National Cable Television Association. Cable Television Developments, October 1992.

1990 Census of Population and Housing, Summary Social Economic and Housing Characteristics, U. S. November 1992.

Paragould Cablevision, Inc. and Citizens Against Higher Taxes, Newspaper advertisements, The Paragould Daily Press, October 27, 29 and 30 1989.

Paragould City Light and Water Commission. Customer Survey, August 1986.

Paragould City Light and Water Commission. "Paragould's Five-Year Cable Conflict." Unpublished paper, 1992.

Schnapf, Mrs. Arthur Frederick. "Letter to Montgomery, Alabama City Clerk," March 24, 1984.

Southeast Research. A Marketing Study for Montgomery CableVision and Entertainment, Inc. May 31, 1990.

Stewart, Robert B. "Letter to Storer Cable Communications," August 11, 1982.

Storer Cable Communications. Press release, September 6, 1990.

Storer Cable Communications. Rate card, February 1993.

Tallent, Michael S., Storer Cable Communications. "Letter to Mayor Emory Folmar and members of Montgomery City Council," March 1, 1990.

Zimmer, Mike, Adams-Russell. "Letter to Mayor Charles Partlow and Members of Paragould City Council," November 3, 1986.