Part I

Industry organization

Industry Organization

- In 2001, 88.3 million households subscribed to MVPS (86.4% of TV households)
- Cable TV dominant (78% of all MVPS)
- HSD and OVS declining
- High DBS growth
- 4.2% price increase
- Limited LEC entry
**Growth of MVPS (1,000 HH)**

![Graph showing the growth of MVPS from 1997 to 2001 for OVS, MMDS, SMATV, DBS, and Cable.](source: FCC 2002)

**Cable industry structure**

![Pie chart showing the market share of total cable HH (2001) with AT&T at 23%, TW at 18%, Comcast at 17%, Charter at 12%, Cox at 9%, Adelphia at 9%, Cablevision at 8%, Others at 4%, and AT&T at 23%](source: NCTA)

**Multichannel options**

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<th>Market entry</th>
<th>Operation</th>
<th>Legal Basis</th>
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<td>Cable TV</td>
<td>Franchise from local franchise authority. Franchise fee, PEG, leased access, some broadcasting rules.</td>
<td>Title VI, Comm Act.</td>
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<tr>
<td>VDT</td>
<td>Sec. 214 certification as a common carrier. No franchise fee, no content control.</td>
<td>Title II, Comm Act.</td>
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<tr>
<td>OVS</td>
<td>FCC certification. No franchise fee, PEG or leased access, some broadcasting rules.</td>
<td>Title VI, Part V.</td>
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<tr>
<td>MMDS/LMDS/DBS</td>
<td>FCC license (awarded via auctions). No franchise fee, no PEG or leased access, some broadcasting rules.</td>
<td>Title III, Comm Act.</td>
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Franchising authority

- A franchise is an authorization to construct a cable system using public rights-of-way and easements.
- A franchising authority is any government entity empowered by federal, state, or local law to grant a franchise, typically a city council or a county commission.
Initial franchising

- Cable systems are franchised by local governments. However, the Cable Act 1992 sets ground rules for FAs
- Initial franchises in most of the U.S. have already been awarded. In new areas, the process typically starts with a request for proposal (RFP)
- Prohibition of exclusive franchises

Initial franchising ...

- Prohibition of “red-lining”
- Operation only after filing of a registration statement at the FCC

Franchise renewal & sales

- Franchises are typically awarded for 5-7 years
- Renewal process can be started as early as three years before the expiration date by the cable system or the franchising authority
- Newly constructed or purchased cable systems may not be sold for three years
Franchise renewal ...

Main stages of the franchise renewal process
1. Public proceeding, allowing the public to comment on the operator’s performance and the community’s cable needs for the future;
2. Submission of proposal for renewing the license by the cable operator;
3. Franchising authority may either renew or issue a preliminary assessment that the franchise should not be renewed. In the latter case, an administrative proceeding is commenced considering the following factors:
   (a) Has the operator substantially complied with the terms of the existing franchise and the law?
   (b) Has the quality of the operator’s service (other than programming) been reasonable in the light of community needs?
   (c) Can the operator provide the facilities and services in the renewal proposal?
   (d) Will the proposal meet future cable-related community needs?
4. Upon conclusion of the proceeding, the franchising authority issues a decision to renew or deny the proposal. A denial must be based on the four factors specified above.
5. If a franchise is not renewed, the cable operator has to sell at a “fair market value”.
6. If a franchise is revoked, the sale is to be at an “adequate price”.

Part III
Price and Operational Regulation

Cable rate regulation
- Subscriber rates are unregulated if the FA decides to refrain or if the system faces effective competition:
  - the cable system serves less than 30 percent of the households in the franchise area, or
  - the system competes at least with one other multichannel provider available to at least 50% of the households in the area and subscribed by over 15% of these households
- Small systems not price regulated
Cable rate regulation ...

- Few rates can be regulated:
  - Basic service tier as well as equipment and installation (FCC or certified local FA)
  - Cable programming tier after complaints (FCC, before April 1999; unregulated thereafter)
  - Per-channel or per-view unregulated
- Benchmarking and cost of service regulation for basic services; (price caps were used for higher tier services)

PEG channels

- Local FAs can require cable operators (COs) to set aside Public, Educational, & Government (PEG) channels
- Operators may be required to provide services, facilities, and equipment for the use of these channels
- COs do not have general editorial control over PEG channels but can reject sexually objectionable material

Leased commercial access

- A cable operator with a system of more than 35 channels must allow third parties to lease and program up to 15% of its channel capacity (see additional web material)
- One third of that channel capacity may be set aside for programming from minority and educational sources
Signal carriage rules

- Under the **must carry rules** a cable system has to carry as part of its basic service tier the signals of local commercial TV stations that have opted for must carry status, of qualified non-commercial educational TV stations, and qualified LPTV stations. The number of must carry channels varies with the overall number of channels on the system (see class handout)
- Under retransmission consent COs must acquire the consent of the TV licensee

Challenges to must carry

- Cable industry raised 1st Amendment challenge to must carry rules
- Basic question: is cable an editor (1st Amendment speaker) or not
- *Turner Broadcasting System, Inc. v. FCC* (512 U.S. 622, 199 "Turner I")
  - Must carry does advance important government interest unrelated to suppression of free speech (preserve free over-the-air TV)

Challenges to must carry ...

- Does not burden substantially more speech than necessary to further these interests
- Remanded to lower court for creation of more evidence on First Amendment issues
  - Affirms constitutionality of must carry rules
  - Intended to serve three interrelated goals:
Challenges to must carry ...

- Preserve the benefits of free over-the-air local broadcast television
- Promote widespread dissemination from a multitude of sources
- Promote fair competition in the television programming market
- Must carry rules serve important government interests in “direct and effective way”
- Do not burden substantially more speech than necessary
- Supported by three justices and one in part

Internet access

- For most homes, cable systems are the only existing broadband access channel
- FCC so far reluctant to require cable systems to provide unbundled, non-discriminatory access to Internet Service providers
- Some cable franchise authorities have made transfer contingent on open access (e.g., Portland, OR)

Part IV

Content and Ownership
**Original cablecasting**

- Programming under the exclusive control of the cable operator
- Broadcasting rules apply
  - Equal opportunity rules for qualified candidates
  - Personal attack rules & political editorial rules
  - Lottery information & sponsorship identification
  - Commercial limits in children’s programs

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**Obscenity and indecency**

- TC Act 1996 increased maximum fine for transmission of obscene material from $10,000 to $100,000
- TC Act 1996 permitted operators to refuse to transmit any portion of a PEG or leased access program that contains obscenity, indecency, or nudity
  - FCC rules challenged in *Alliance for Community Media v. FCC* (D.C. Cir. 1995)

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**Obscenity & indecency ...**

  - Requirement that cable operators confine "patently offensive" programming and automatically block it unless subscriber makes written request held as unconstitutional (6-3). Other less restrictive means are available (e.g., V-Chip, lockboxes)
  - Permission to refuse transmission if cable company "reasonably believes" program is indecent upheld as constitutional (7-2)
Obscenity & indecency...

- Permission to refuse indecent programming on PEG channels seen as unconstitutional (5-4)
- TC Act 1996 requires that cable operators fully scramble audio and video of channels featuring sexually explicit programming
- TC Act 1996 requires scrambling or blockage of channels that are not specifically subscribed at no charge

Content restrictions

- Network Exclusivity
  - The network non-duplication rules are designed to prevent cable systems from violating the exclusive rights of television stations to show network programming in their markets
  - Prohibit a cable system from carrying the network programming of a distant TV broadcast affiliate if a local network affiliate carries the same programming

Content restrictions ...

- Syndication Exclusivity
  - Allow a local TV broadcast station to prohibit a cable system from carrying the syndicated programming of a distant station if the local station carries the same programming

- Sports Blackout
  - A TV station’s live broadcast of a sporting event may not be carried simultaneously by cable systems in the station’s market unless all tickets to the event have been sold