



1-1-1973

Cable Television U.S.A.: An Analysis of Government Policy

Kenneth A. Manaster

Santa Clara University School of Law, kmanaster@scu.edu

Follow this and additional works at: <http://digitalcommons.law.scu.edu/facpubs>



Part of the [Law Commons](#)

Automated Citation

Kenneth A. Manaster, *Cable Television U.S.A.: An Analysis of Government Policy*, 62 Ky. L.J. 902 (1973),
Available at: <http://digitalcommons.law.scu.edu/facpubs/669>

This Article is brought to you for free and open access by the Faculty Scholarship at Santa Clara Law Digital Commons. It has been accepted for inclusion in Faculty Publications by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.

CABLE TELEVISION U.S.A.: AN ANALYSIS OF GOVERNMENT POLICY. By Martin H. Seiden. New York, New York: Praeger Publishers, 1972.

Seldom does the American television viewer think about what lies behind the simple act of turning on and tuning in the family television set. If he stops to consider the complicated scientific wonders that bring an electronic replica of far-off events into his home, he probably gives up quickly—baffled. If he considers the economic, political, and regulatory background of his “window to the world,”¹ he undoubtedly also has an equally hard time getting things in focus.

In recent years the viewer has been prodded by a few major events to think about the complicated, behind-the-picture forces which determine what he views each day and evening. These events include the Nixon administration's criticisms of network television, news reporters, and commentators² and the unique agreement reached among the three major networks for alternating live coverage of the Senate Watergate Committee hearings. A bit farther back, the explosive TV quiz show scandals undoubtedly prompted some public questioning about the programs we see and how they are run, and about governmental supervision (or lack of it) over television. Perhaps the action by Congress in 1973 to ease the local blackout rules on professional football games³ also turned a few viewers' thoughts away from the action on the tube and toward the action behind the tube.

In some parts of the nation viewers perhaps have been prompted by the arrival of cable television to try to understand a bit more deeply what television is all about. For citizens who are willing to stop looking at television long enough to read and learn more about it, Dr. Martin H. Seiden's *Cable Television U.S.A.* offers understanding of the medium in general and of cable television in particular. Seiden's data and comments also should be of particular interest, and of greater utility, to various narrower audiences, including present or prospective cable television operators, investors in cable systems, government policy makers and administrators, economists, and lawyers who may be involved in almost any aspect of electronic communications. I mention these audiences because there is a great deal of information handily collected in this work, most of which is based upon Dr. Seiden's own extensive data-gathering efforts. Seiden heads an economic consulting firm which specializes in mass communications; he is obviously

¹ The call letters of educational television station WTTW in Chicago, Illinois represent this apt phrase.

² See Belli, Book Review, 60 Ky. L.J. 770 (1972).

³ 87 Stat. 350 (1973).

quite adept at accumulating and analyzing economic data relating to broadcasting and cable television.

The principal strength of *Cable Television U.S.A.* is that it identifies the many interrelationships between different areas of the television industry which have influenced development of cable television and of government policy toward it. The principal weakness of the book is that it fails to go very far beyond describing these interrelationships—a careful, well-organized analysis is lacking.

Dr. Seiden's study alerts the reader to a fascinating web of forces which are not so obviously related. He offers insight into the various interactions of cable television, UHF television, VHF television, network television, non-network television, educational television, big city television, small town and rural television, communications common carriers, space satellite communications, government regulation at the local, state, and federal levels, the law of copyright, syndicated programming, and television advertising. Dr. Seiden discusses these and other interdependent elements of the television industry in a mostly clear and succinct fashion.

Especially enlightening is his introductory material which relates the original allocation of spectrum space for television broadcasting to the growth of community antenna television (CATV), now commonly called cable television or, more broadly, cable communications. Unfortunately, this historical material is far too brief. The author could have provided much more explanation of the early federal policy choices in favor of local broadcasting and the promotion of UHF service. This sketchiness is especially troublesome when Seiden reaches his later discussion of the Federal Communications Commission's 1971-72 change of heart, when it acknowledged that cable TV is not necessarily a lethal threat to either VHF or UHF broadcasting.⁴ Although Seiden does provide a general overview of the development of federal policy, much more could have been provided by an author with his expertise and experience.

One of Seiden's objectives is to dispel some of the myths that have developed regarding cable TV. He succeeds in performing this valuable service, especially in his discussion of the heavy costs of CATV operations.⁵ The potential operator or investor is well-advised to understand the jigsaw puzzle of expensive inputs which constitutes a cable system and which may or may not turn a profit. Seiden also argues quite persuasively that cable TV is not now and never has been

⁴ M. SEIDEN, *CABLE TELEVISION U.S.A.: AN ANALYSIS OF GOVERNMENT POLICY* 115 (1972) [hereinafter cited as SEIDEN].

⁵ SEIDEN, Ch. 4.

a real impediment to development of profitable UHF broadcasting. He makes a strong case for the proposition that CATV actually could have aided UHF, which has had its own separate economic struggles, had CATV not been so heavily restricted from entering the major markets.⁶

Running throughout the book, though never fully articulated, is Seiden's opposition to federal regulation of cable TV. Unfortunately this opposition does not emerge into a clear argument either for total deregulation or for some sort of limited government control. Seiden gives surprisingly short shrift to the 1972 FCC package of cable TV regulations.⁷ He neither analyzes it comprehensively nor does he make clear just why he thinks the FCC controls are unwarranted as a whole or in their various particulars.

The conclusion Seiden reaches after his brief survey of the 1972 regulations is simply that they were not "necessary" at all. As reasons for this position, he states that no broadcaster has yet failed because of CATV competition and that the public has not complained about "the price, quality, and variety of CATV services."⁸ He then takes his argument to the extreme of asserting that ". . . CATV is a minor—indeed insignificant—medium. Even if CATV's advocates could realize their wildest dreams—i.e., 'wiring up' half the nation—CATV would still be one of the nation's smaller mass media."⁹ Seiden does document quite well his argument that cable TV is still relatively small,¹⁰ but he stretches the reader's credulity when he asserts that it is "insignificant" and therefore need not be regulated at all. An estimated five million CATV subscribers at present,¹¹ serving "about 6 or 7 percent of the nation's population,"¹² and with a future market far in excess of that,¹³ are not insignificant, even if we disregard the broad scope of cable services which have been envisioned for the future.

Perhaps Dr. Seiden has been caught in the dilemma which seems to have captured the cable TV industry in general. Having oversold its profitability and the imminence and magnitude of its impact on broadcasting and other communications services, the industry has found itself too heavily regulated for comfort. Thus the emphasis shifts to minimizing the industry's strength and implications. Ironically this comes at a time when the FCC, the courts, and legislative arms of

⁶ SEIDEN, 17-18, 101.

⁷ 47 C.F.R. § 76 (1972).

⁸ SEIDEN, 124.

⁹ *Id.*

¹⁰ SEIDEN, 21-23.

¹¹ SEIDEN, 25, Table 2, Note b.

¹² SEIDEN, vii.

¹³ SEIDEN, 3.

state and local government are focusing with some enthusiasm upon the tremendous potential services of cable communications.¹⁴

These difficulties in the book suggest the author's limited grasp of "the role of the government in the nation's economic and political life," a broad issue which Seiden sets out to explore through the example of CATV but never really gets around to grappling with.¹⁵ He observes, during his discussion of the possible effects of space satellites on CATV, that without regulation "there is little doubt that the most advanced technology would find its way into the market place."¹⁶ Apparently he considers unfettered marketing of "the most advanced technology" *ipso facto* a good thing, unless perhaps somebody is unfairly put out of business or the public complains about some inadequacy of service.¹⁷ In contrast to this limited view of the function of government regulation, the language of Mr. Justice Brennan in *Midwest Video*¹⁸ is striking:

... CATV systems, no less than broadcast stations, may enhance as well as impair the appropriate provision of broadcast services. Consequently, to define the [Federal Communications] Commission's power in terms of the protection, as opposed to the advancement, of broadcasting objectives would artificially constrict the Commission in the achievement of its statutory purposes and be inconsistent with our recognition in [*U.S. v. Southwestern Cable Co.*, 392 U.S. 157 (1968)] "that it was precisely because Congress wished 'to maintain, through appropriate administrative control, a grip on the dynamic aspects of radio transmission,' . . . that it conferred upon the Commission a 'unified jurisdiction' and 'broad authority'."

Clearly the affirmative functions of the FCC in furthering broad statutory policies do not fall within Seiden's view of the proper relationship between government and the cable television industry. He would have contributed much more to an understanding of the industry had he addressed himself to these functions and their most effective dimensions, rather than broadly and belatedly denying their necessity.²⁰

The American public faces a complicated range of choices regarding our future communications media. Unless there is increased public

¹⁴ See *United States v. Midwest Video Corp.*, 406 U.S. 649, 651 (1972).

¹⁵ SEIDEN, 5.

¹⁶ SEIDEN, 137.

¹⁷ Compare SLOAN COMMISSION ON CABLE COMMUNICATIONS, ON THE CABLE: THE TELEVISION OF ABUNDANCE 3 (1971) ("The notion that technological advance is synonymous with progress has lost its old attraction, and there are many who will assert that it is quite the opposite that is true.")

¹⁸ *United States v. Midwest Video Corp.*, 406 U.S. 649 (1972).

¹⁹ *Id.* at 664-65 (citation omitted).

²⁰ Cf., Walsh, *CATV: Let the Cables Grow*, 55 MARQ. L. REV. 205 (1972).

awareness and understanding of these choices, the structure and functions of the media, especially the electronic media, will be determined almost exclusively by the impact of the already established communications industries on the existing regulatory framework. A book such as *Cable Television U.S.A.* reminds us that there is still time for citizen input into the formation of communications policy. The technology is still in flux—not only are the capabilities of cable communications not yet fully developed, but a breakthrough in satellite-to-home broadcasting could make both cable communications and traditional broadcasting obsolete.²¹ The regulatory frameworks are also still in flux. Finally, the economic structure of cable TV and its relationship to common carriers and broadcasters are also still in transition.

Seiden's book invites us to recognize that these uncertainties can be translated into opportunities for the development of an efficient, economical, and democratic electronic communications system. Even if cable TV may not be the principal medium in years to come, it seems to be a solid focal point for evaluation of the media as we now have them. Beyond this, cable TV should turn our thoughts to the forms of media we want in the future in order to serve best our needs to communicate within our local communities, across this country, and with the people of other nations.

*Kenneth A. Manaster**

²¹ SEIDEN, 142; JOHNSON, HOW TO TALK BACK TO YOUR TELEVISION SET 161-162 (1970).

* Assistant Professor of Law, University of Santa Clara. A.B. 1963, LL.B. 1966, Harvard University.