CAMBRIDGE CITY COUNCIL
CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139
(617) 349-4280
FAX (617) 349-4287

Alice K. Wolf
City Councillor

October 22, 1992

D. Margaret Drury, City Clerk
City of Cambridge
795 Massachusetts Avenue
Cambridge, MA 02139

Dear Margaret:

I am submitting to the City Council a memorandum of the new Cable TV legislation.

Sincerely,

Alice K. Wolf

Alice K. Wolf
City Councillor

/s

LAW OFFICES OF
HOWARD E. HORTON

PLEDGE OF ALLEGIANCE BUILDING
142 BERKELEY STREET
BOSTON, MASSACHUSETTS 02116
(617) 267-9595
FAX (617) 236-7883

WILLIAM AUGUST
ASSOCIATE

MEMORANDUM

TO: Municipal Officials and Cable Advisory Committees

FROM: William August, Esq. and Howard E. Horton, Esq.

RE: **The Cable Television Consumer Protection and Competition Act of 1992**

DATE: October 20, 1992

A number of municipal officials have recently inquired about the impact of the Cable Television Consumer Protection and Competition Act of 1992 which became law on October 5th. This legislation creates new opportunities for municipal regulation of the cable television industry in the areas of rate regulation and consumer protection. An overview of the new law is provided below.

1. Basic Service Rate Regulation

The new cable law authorizes local franchising authorities and the Federal Communications Commission (FCC) to regulate the rates for entry level "basic cable service." The regulated basic service tier includes qualifying broadcast and community access channels, however, some cable operators may elect to include satellite services within the rate regulated basic package.

Regulation of the basic rate may also include regulation of the charge or price for "installation and lease of the equipment used by subscribers to receive the basic service tier, including a converter box and remote control unit" and the monthly charge for additional outlets. If, however, a system faces effective competition from another cable company or from another multichannel video provider, basic rates may be deregulated.

The new law directs the FCC to promulgate rules on basic rate regulation by April 5, 1993 (180 days following enactment). Because most cable subscribers buy expanded service levels above the entry level basic package, the impact of the new rules may be less than what is commonly expected. On the other hand, once the basic tier is rate regulated, basic subscribership may increase, making regulation of the tier more meaningful. Basic subscribership may also increase as a result of the Act's buy-through provisions which make the lower cost basic

service package a more attractive option. The new law requires that subscribers with entry level basic service be allowed the option of pay-per-channel (e.g., HBO, The Movie Channel) and pay-per-program services, so long as the system is technically capable of allowing basic service to be a "gateway" to the premiums. Renewal licenses can require addressable terminals ("converters") through which basic subscribers can access premium services.

2. FCC Certification of Local Franchising Authority Regulation

The statute provides that a franchising authority must apply for FCC certification prior to implementing local regulation of rates for basic cable service. 47 U.S.C. 543(a)(3). To qualify for rate regulation certification, a franchising authority must demonstrate that it will "adopt and administer regulations with respect to the rates subject to regulation . . . that are consistent with the regulations prescribed by the Commission . . . " While it is unclear just what the FCC will require, it is likely that franchising authorities will have to demonstrate administrative and economic expertise necessary to evaluate fair rate of return criteria.

In Massachusetts, the best approach would appear to be to utilize the existing Massachusetts rate regulation rules codified in 207 C.M.R. 6.00 et seq in franchising authority petitions for certification. These regulations, though dormant during the recent years of deregulation, may provide a readily available framework for local rate regulation, with appeals of local rate decisions to the Massachusetts Cable Television Commission. We await guidance from the Massachusetts Cable Television Commission as to whether they agree with our approach and whether they will seek to have this system of rate regulation certified by the FCC. If that is the case, individual certification by Massachusetts municipalities may become unnecessary. Note that the Massachusetts rate regulations *may* provide a useful set of rate procedures and accompanying precedents for municipalities outside of Massachusetts for use in petitions for FCC certification of rate setting authority. Municipalities which do not opt for local rate regulation also have the option of petitioning for FCC regulation of basic service.

3. Regulation of "Unreasonable" Rates for Expanded Service

In addition to allowing direct regulation of rates for basic cable service and related equipment, the law also allows franchising authorities to file complaints with the FCC to challenge "unreasonable" rates and charges for expanded service. Although the Act is somewhat vague about what will constitute an unreasonable rate, this area of rate regulation may have the broadest impact on the ordinary consumer because it will affect the rates for expanded service levels which most subscribers purchase. Successful challenges of such rates may translate into significant consumer savings.

The FCC is directed to issue fair and expeditious procedures for the resolution of local complaints against such unreasonable rates. The statute provides that rate unreasonableness will be determined relative to rates in systems facing effective competition, rates in similarly situated systems, and analysis of the operator's revenues and costs.

4. Senior Citizen and Low Income Discounts

The new law specifically affirms the validity of senior citizen and low income discounts, removing previous concerns that such discounts might be barred by federal rate deregulation.

5. Customer Service and Consumer Protection Standards

The FCC is also directed to adopt customer service standards governing cable system office hours, telephone response time, installations, outages, service calls and communications between the cable operator and the subscriber (including standards governing billing practices). The law provides that the FCC standards will be a "floor" and that "nothing in this section shall be construed to preclude a franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards established by the Commission."

Although Massachusetts's consumer protection regulations cover billing and disconnection of service practices (207 CMR 10.00 et seq), state law lacks substantive customer service standards with minimums for cable operator office hours, telephone and service call response time.

6. Promotion of Competition

An important feature of the new cable law is its promotion of competition in the video marketplace. The statute directs the FCC to adopt rules to require programmers (e.g., HBO, The Movie Channel) to make their product available to cable's competitors, such as competing cable companies ("overbuilders") and other multichannel video providers (e.g., "wireless cable" and direct broadcast satellite companies). This will brighten the landscape for would-be competitors who will soon have reasonable access to basic video product.

7. Mandatory Carriage of Broadcast Signals and Retransmission Consent

New "must carry" rules will require cable operators to carry qualifying local broadcast signals. Under a controversial part of the law, broadcast stations may instead elect to negotiate cable operator retransmission payments ("retransmission fees") from the cable company as the price for broadcast signal carriage. This may actually increase the cost of cable service. Federal courts have already twice struck down mandatory carriage rules on First Amendment grounds, and cable companies have already initiated litigation to challenge the new mandatory signal carriage provisions.

8. License Renewal

An amendment to the renewal statute requires franchising authorities to commence renewal proceedings within six months of a cable company request to initiate a license renewal process under the "formal" renewal provisions. See

47 U.S.C. 546. Under the Act's formal provisions, a cable operator can invoke the formal renewal framework between the 36th and 30th month prior to license expiration. Municipal initiation of the renewal process involves the commencement of proceedings to ascertain local cable needs and interests and to review the cable operator's past performance as well as compliance with the existing license and applicable law. The amendment also significantly narrows the defense of acquiescence, a defense which cable companies may raise against a denial of renewal based on non-compliance.

9. License Transfers

Cable companies are prohibited from selling licenses within three years of license acquisition, except in the case of a transfer to a commonly controlled entity. The Act further provides that a license transfer application will be considered granted if the local franchising authority fails to act within 120 days of the request for local approval. The 120 day limit commences upon the transfer applicant's providing the franchising authority with information required by municipal officials. The 120 day limit may be extended by agreement between the transfer applicant and the franchising authority. It should be noted that this 120 day time frame is similar to the one established in Massachusetts in <u>Teleprompter of Worcester, Inc. v. Board of Selectmen of Auburn,</u> CATV Docket No. A-37 (May 17, 1983).

10. FCC Rulemakings

As noted above, the new law orders the FCC to fill in many of the details through the notice and comment rulemaking process. Municipalities certainly have a stake in the outcome of the FCC's rulemakings and should promptly consider participation in same.

The contents of this memorandum are intended for general information purposes only, and you are urged to consult your own lawyer concerning your own situation and any specific legal questions you may have. This memorandum should not be construed as legal advice or legal opinion on any specific facts or circumstances. Under the rules of the Supreme Judicial Court of Massachusetts, this material may be considered as advertising.

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COMMUNICATIONS & REPORTS
FROM CITY OFFICERS S-860

Comm. from Councillor Alice K. Wolf transmitting a communication from William August, Esquire and Howard E. Horton, Esquire regarding the Cable Television Consumer Protection and Competition Act of 1992.

In City Council,

October 26, 1992

Referred to the City Manager for a report
Referred to Cable TV & Communication Committee.
Copy sent to City Mgr 10/28/92 ee
Copy sent to Cable Committee 10/28/92 ee.