Lautenberg carries fight for tighter cable TV regulations to the House

By J. SCOTT ORR,
Star-Ledger Washington Bureau

WASHINGTON—Sen. Frank Lautenberg (D-N.J.) yesterday launched a House version of the fight he has been conducting quietly in the Senate to prevent proposed cable television legislation from bending too far in favor of the industry.

In testimony before a House telecommunications subcommittee, Lautenberg outlined a number of provisions he is trying to insert into existing cable legislation in the Senate.

Lautenberg wants cable legislation to include provisions to ensure that local franchising authorities retain the ability to deny franchise renewals, that rates can be regulated in area's where cable is the primary source of adequate television reception and that public access is guaranteed.

He pointed to New Jersey's cable law, under which the Public Utilities Commission (PUC) regulates rates and decides disputes over franchise denials, as an example of how government can effectively oversee the cable industry.

"Local regulation," Lautenberg said, "has not impeded the development of cable in New Jersey. To the extent you can, I urge you to respect those local processes that have worked well."

The subcommittee is holding hearings prior to introducing cable legislation. On the Senate side, however, a bill is nearing floor action.

The Senate measure, which has been in the works for two years, contains none of the Lautenberg provisions and the freshman lawmaker has launched an unusually strong campaign to insert them.

He voted against the measure this month when it was considered by the Senate Commerce Committee on which he sits. He was successful last week in delaying a floor vote until next month and is working behind the scenes to gain support for amending the measure.

The Senate bill followed a compromise agreement worked out between the National League of Cities (NLC) and the National Cable Television Association (NCTA).

The deal ensures cities' rights to grant monopoly franchises and to negotiate franchises. It also allows franchise holders to raise rates by 5 per cent per year, eliminates rate restrictions and caps fees franchise holders must pay to cities at 5 per cent of annual gross.

Lautenberg's proposed amendments would allow states to set rates in areas where "people rely on cable television simply to get clear reception of television signals." Northwestern New Jersey is one such area.

Under the 1972 state cable law, the PUC sets restrictions on cable rates. The Senate bill would eliminate that regulative authority.

Lautenberg also is opposed to a provision in the Senate version that would require the court system to review appeals in cases where local authorities deny renewal of cable franchises. During the appeals process, the franchise would be retained.

In New Jersey, the PUC handles such disputes, a system Lautenberg believes is preferable.

The senator also said public access to cable transmissions is essential to providing a "diversity of views."

The Senate bill would allow local authorities to require governmental access, but prohibits requirements for public access.

Calendar No. 106

98TH CONGRESS } SENATE { REPORT
1st Session } { No. 98-67

CABLE TELECOMMUNICATIONS ACT OF 1983

REPORT

together with

MINORITY VIEWS

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 66

TO AMEND THE COMMUNICATIONS ACT OF 1934

APRIL 27 (legislative day, APRIL 26), 1983.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE
19-793 O WASHINGTON : 1983

MINORITY VIEWS OF MR. LAUTENBERG

For a variety of reasons, I am unable to support S. 66 in its present form.

One of the principal purposes of this legislation, as I understand it, is to promote the expansion and development of cable television, by removing many of the bottlenecks and reducing many of the costs imposed by local governmental franchising agencies. In a State like New Jersey, however, the existing regulatory framework has apparently worked quite well.

Since 1972, New Jersey has had in place a statewide scheme for franchising and regulating cable television. The State has uniform franchising procedures. Franchise fees to municipalities are subject to a 2 percent ceiling. The State's office for cable television regulation has issued a statewide common tariff on basic rates. The result is that franchising has proceeded quickly. Cable passes 82 percent of the homes in New Jersey and the owners of more than half of those homes subscribe. New Jersey is the first State to have a statewide cable interconnect, accomplished in part through the participation of State regulators. In sum, New Jersey could be the most "wired" State in the Nation. For my State, this legislation does not appear to be a prerequisite to the development of cable television.

Moreover, for other States, where cable television is not yet so widespread, it is questionable whether S. 66 will substantially speed the process of getting cable into people's homes. What the bill will do, however, in New Jersey and in other States, is limit competition, and in various respects disserve the interests of cable television consumers.

When a cable system franchise comes up for renewal, the bill would place the burden on the franchising agency to show why a renewal should not be granted. Even where a franchising agency has good cause to remove a franchise, the process promises to be expensive, drawn out, and tangled in litigation. While I would not oppose some mechanism for fairly compensating an operator whose property is taken over by a succeeding franchisee, I see no persuasive case for barring the consideration of competing franchise applicants. As it stands, though, the bill does not promote competition. It limits it.

S. 66, as reported, would also deregulate the rates charged for basic service. Specifically, deregulation would occur in areas falling within the B-contour of four television stations, three of which are network affiliates. I understand that the rationale behind this deregulation is that television viewers have an alternative if they find deregulated rates too high. They can erect their home roof antenna and tune in local broadcasters' over-the-air signals. So, the argument goes, basic rates would be subject to the pressures of the marketplace.

I am not persuaded. The criteria in the bill would result in the deregulation of basic rates in areas where there are no reasonable alternatives. For example, virtually all of my State would be deregulated under the bill. That would include farflung rural areas long served by so-called classic cable systems—that is, systems that serve a need for clear reception, systems that have penetration rates of 70 percent, 80 percent, or 90 percent. Certainly, until the people in those areas have a reasonable, cost competitive alternative to cable-fed reception, their rates should not be deregulated.

The bill also expressly states that no agency of government shall treat cable systems as a common carrier. So, a franchising agency is not free to require the provision of channels for leased access at fair market value. Moreover, as cable may indeed fulfill the promise of becoming a second critical wire into the home, it is unwise to presume that common carrier treatment would always be unjustified.

I have heard the argument that legislation is needed now to free cable television from the regulatory constraints that prevent it from competing on an even playing field with other technologies, like direct broadcast satellite, multipoint distribution systems, video cassettes and discs. As far as I can tell, however, no technology yet matches cable in offering the diversity and potential range of services from a single source. Nor have I seen any great body of evidence that cable is fast becoming a threatened industry. What is apparent, however, is that this legislation would provide substantial protection to cable systems that, in many respects, operate as local monopolies. On these grounds, the systems should be subject to reasonable regulation and competition, to serve the public interest.

FRANK R. LAUTENBERG.

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June 13, 1983

Mr. Paul E. Healy
City Clerk
City of Cambridge
City Hall
Cambridge, Massachusetts 02139

Dear Mr. Healy:

Thank you for your correspondence expressing your opposition to Senate Bill S. 66.

I agree that the cable telecommunications bill, S. 66, is seriously flawed. In many respects, cable television operates as a monopoly and should be subjected to reasonable regulation and controls in order to protect the public interest. In my view, S. 66 would provide for unduly broad deregulation of cable television rates. It would unjustifiably insulate franchises from reasonable regulation and fair competition. Also, the bill fails to ensure sufficient public access, so important to promoting a healthy diversity of views and information.

For these and other reasons, I was one of only two members of the Senate Commerce Committee to vote against reporting the bill to the full Senate. Since then, I have been working hard to gain support for amendments to the bill when it is considered by the Senate in June.

I am enclosing some materials on this issue which I hope will be interest to you.

Sincerely,

Frank R. Lautenberg
UNITED STATES SENATOR

FRL:kg
Enclosure

5.5-365

Comm. from Senator Frank Lautenberg, in appreciation of resolutions adopted by the City Council Re: Senate Bill 66 on Cable Television & enclosing communications relative to this matter.

In City Council,

June 20, 1983

6/20/83

Placed

on

File