

SACRAMENTO METROPOLITAN CABLE TELEVISION  
COMMISSION  
BOARD OF SUPERVISORS' CHAMBERS  
700 "H" STREET  
SACRAMENTO, CALIFORNIA 95814

THURSDAY

MARCH 7, 1985

2:30 P.M.

Members: Illa Collin; Orvell Fletcher; Toby Johnson; Terry Kastanis; Doug Pope;  
Lynn Robie

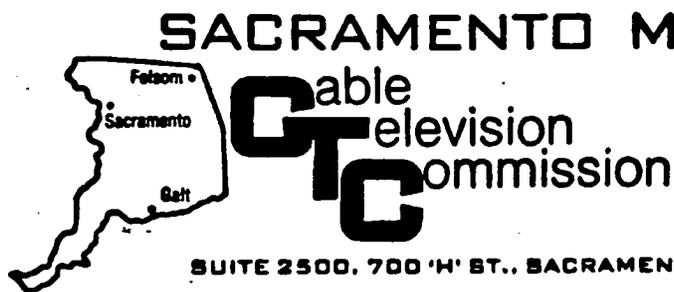
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ITEM NO. 1) Executive Session

ITEM NO. 2) Adoption of Resolution for Technical Modifications and  
Clarifications

ITEM NO. 3) Prevailing Wage Rate Report - Touche Ross & Company

ITEM NO. 4) Government Programming Annual Plan for 1985/86



SUITE 2500, 700 'H' ST., SACRAMENTO, CA 95814 • (916) 440-6661

ROBERT E. SMITH  
EXECUTIVE DIRECTOR

February 28, 1985

To: Board of Supervisors  
City Council  
Sacramento Metropolitan Cable Television Commission

From: Bob Smith, Executive Director  
Sacramento Metropolitan Cable Television Commission

Subject: SUMMARY OF STAFF RECOMMENDATIONS - TECHNICAL MODIFICATIONS AND CLARIFICATIONS

The attached staff report outlines the request by the cable company for technical modifications and clarifications and details the staff recommendations. These staff recommendations are summarized below:

1. Change the dual cable 350 MHz system to a single 550 MHz system, initially activated at 450 MHz.
2. Permit the use of AM microwave in a seven hub configuration rather than supertrunk FM microwave and four headends.
3. Allocate up to 20 MHz of spectrum space for Institutional Network usage on the 3,000 Subscriber Network. When this capacity is 90% utilized, a separate I-Net of up to 200 miles is required.
4. Allow the cable company to begin building the system simultaneously throughout Sacramento County rather than the confined geographical areas originally bid.
5. Open a public access studio and begin basic training in February 1986.
6. Request the Commission to recommend that the various Departments of Public Works review cable construction in front yards rather than at the lip-of-the-gutter.
7. Utilize a major accounting firm to determine the commercial viability of the 24-hour local news service prior to its initiation, rather than beginning the service and then commencing a test period.
8. Eliminate the requirement for preconstruction photography.
9. Clarify the original formula used to calculate the amount of copyright fees for distant signals.

Details on these recommendations are included in the staff report.

BOB SMITH, Executive Director  
Sacramento Metropolitan Cable  
Television Commission

Attachment  
85-138

SPECIAL MEETING

SACRAMENTO CITY COUNCIL

THURSDAY, MARCH 7, 1985

I HEREBY CALL a Special Meeting of the Sacramento City Council to meet jointly with the Sacramento County Board of Supervisors and the Sacramento Metropolitan Cable Television Commission in the Board of Supervisors' Chamber, 700 H Street, Suite 1450, Sacramento, California, on March 7, 1985, at the hour of 2:30 P.M., to meet:

- (1) For the purpose of considering and acting upon modifications and clarifications of the Franchise Documents requested by Sacramento Cable Television (Scripps-Howard) and;
- (2) For the purpose of meeting in closed session on legal matters pursuant to the authority of Government Code Sections 54956.9(b)(1) and 54956.9(c).

ISSUED: This 1st Day of March, 1985



ANNE RUDIN  
MAYOR

ATTEST:



LORRINE MAGANA  
CITY CLERK

# SACRAMENTO METROPOLITAN



## Cable Cable Television Commission

SUITE 2500, 700 'H' ST., SACRAMENTO, CA 95814 • (916) 440-6661

ROBERT E. SMITH  
EXECUTIVE DIRECTOR

February 26, 1985

MEETING IN JOINT SESSION:  
March 7, 1985, 2:30 p.m.

To: Board of Supervisors  
City Council  
Sacramento Metropolitan Cable Television Commission

From: Bob Smith, Executive Director  
Sacramento Metropolitan Cable Television Commission

Subject: ADOPTION OF RESOLUTION FOR TECHNICAL MODIFICATIONS AND CLARIFICATIONS

The attached letter from Sacramento Cable Television requests technical modifications to the cable system design and certain other clarifications of the Franchise Documents as follows:

1. Change the dual cable 350 MHz system to a 550 MHz single cable design initially utilizing 450 hardware spaced to 550 MHz and ultimately retrofitted to the higher 550 MHz capacity upon certain conditions.
2. Make corresponding changes in the microwave distribution system to use AM microwave in a seven hub configuration rather than supertrunk, FM microwave, and four headends (also includes a substitution request for use of 60% braided shield drop cable which staff recommends processing later under the equipment substitution procedure).
3. Allocate up to 20 MHz of spectrum space for I-Net usage until 90% of capacity is obtained, at which time up to a 200 mile I-Net is required.
4. Allow adjustment of the mileage construction timetable to begin building the system throughout the Imposed Service Area rather than the confined geographical areas originally bid. Open a public access studio and begin basic training in Month 26 due to delay in construction start-up.
5. Secure a recommendation from the Commission to the various Departments of Public Works regarding underground construction in front yards rather than at the lip-of-the-gutter.
6. Utilize a major accounting firm to determine the commercial viability of the 24-hour news service prior to its initiation, rather than beginning the service and then commence a test period.
7. Eliminate the requirement for preconstruction photography.
8. Restate the original formula to specify the maximum dollar amount of revenues from Tier I rates to be used in paying copyright fees for distant signals.

Fiscal Appropriateness.

Sacramento Cable Television states their estimated \$100 million loan is in place, and are prepared to initiate construction by March 15th. However, by the attached letter, they indicate that it is necessary to reduce expenditures by approximately \$20 to \$30 million to make the Sacramento system a viable business enterprise.

Actual experience in urban markets has caused the company to change their original revenue/subscriber and pay to basic assumptions. Further, competition from VCR sales, MDS systems and video recordings are threatening the financial health of the Sacramento system by, among other factors, depressing the original penetration assumptions. Granting the technical changes requested, according to Sacramento Cable Television, will mitigate these adverse economic factors. In addition, with the design change, construction will occur simultaneously from multiple hubsites located throughout the Imposed Service Area rather than the limited geographical areas originally indicated.

In order to determine the necessity of granting such modifications, the Commission staff asked Touche Ross to review the reasonableness of these assumptions and the appropriateness of approving their request.

According to Touche Ross, whose final report will be distributed Tuesday, Sacramento Cable's request for changes in system design are reasonable.

- The company has lowered its penetration and revenue-per-subscriber projections. Based on Touche Ross' analysis of current urban markets' experience since the submission of the original proposal, the lower projections appear justified and reasonable.
- Given these new projections, the requested change in design will allow Sacramento Cable to maintain financial health and stability.
- The proposed changes in system design are sound economically, because they provide significant capital savings for the operator, without cut-backs in the range of programming and services available to subscribers.

Technical Appropriateness.

The technical modifications were submitted to Hammett & Edison, the Commission's Engineer, who determined whether or not the proposed system was as reliable, had sufficient capacity, and was as technically sound as the dual cable configuration originally bid. It is not possible to make a component by component comparison of the proposed 450/550 MHz system versus the dual cable 350 MHz system since they are entirely different designs and configurations. However, it is possible to review whether or not the proposed alternative system design is equivalent based upon the following overall factors:

1. Provides in every respect the same degree of reliability as the original proposed system.
2. Has the capacity to carry both the program services originally bid as well as sufficient capacity to carry all services that might be brought on line in the foreseeable future.
3. Is technically equal to or superior in signal quality at point of delivery as that originally bid.

The conclusions of Hammett & Edison, whose final report will also be distributed Tuesday, are as follows:

1. Reliability.

Subject to Sacramento Cable Television agreeing to the stipulations in the Hammett & Edison report on the Alternative System Design request of February 20th, and based on manufacturers' representation, Hammett & Edison concludes that the AM microwave system now proposed will provide reliability comparable to the combined FM and AM microwave system originally proposed.

2. System Capacity.

Subject to a successful frequency coordination study and ultimate licensing by the FCC, which Hammett & Edison believes to be likely, the capacity of the proposed system will be adequate for delivery of presently proposed and what they believe to be reasonably foreseeable future programming and other services.

3. Quality and Performance Characteristics.

Subject to Sacramento Cable Television agreeing to the stipulations in the Hammett & Edison report on the Alternative System Design and based on manufacturers' representation, Hammett & Edison concludes that the quality and performance characteristics of the 550 MHz single cable system will be equal to or better than the characteristics of the dual cable 400 MHz system originally proposed.

From staff's viewpoint, the new system provides the same overall reliability, capacity, and meets our technical standards and, therefore, it is recommended that you approve the design change. However, such approval should be conditioned upon the stipulations as outlined in the Hammett & Edison report.

Recommended Technical Modifications.

According to the Commission's Engineer, the equipment for the 550 MHz system is still unavailable as a standard production model, but will be very soon. Therefore, to ensure cable is delivered to the Sacramento subscriber as soon as possible, staff is recommending that the cable company be permitted to:

--- Initially construct the system utilizing 450 MHz hardware spaced at a 550 MHz design.

--- Mandated to upgrade to a 550 MHz system when it is:

Determined to be appropriate, in the sole discretion of the Commission, unless the company can demonstrate that it is:

(a) Unreliable;

(b) Unavailable in production quantities;

(c) Upgrade equipment is incompatible with existing amplifier housings; or

(d) Alternative technology is available which provides the capacity of 550 MHz.

With respect to the I-Net, staff finds that the 3,000 mile reserved spectrum space (up to 20 MHz) on the 450 MHz subscriber system is acceptable for I-Net usage as long as:

--- Up to a 200 mile separate I-Net loop is constructed when over a 30-day period, 90% of the existing 20 MHz capacity on the Subscriber Network is utilized; or

--- When an available user contract cannot be accommodated with this I-Net allocation on the Subscriber Network; and

--- The five video I-Net channels obligated to the Educational Consortium are, at all times, made available.

#### Clarifications.

##### 1. Front Yard/Parkway Construction.

The company has asked that it be allowed to reduce construction costs by building a portion of the 1,000 miles of underground cable installation in front yards or parkways outside the street area. This issue has been discussed with Public Works on numerous occasions. However, the cable company is now managed by new personnel who earnestly believe that this issue should be evaluated again.

In addition, the company believes it is possible to pre-approve certain areas for front yard construction. It is conceivable that Public Works may agree that some areas can be so pre-approved.

Staff suggests that the Commission recommend that Public Works meet with the cable franchisee to discuss whether certain underground construction areas can be approved for front yard construction. It should be noted that the Public Works Departments are not bound to grant the cable company's request.

2. Preconstruction Photography.

Preconstruction photography was raised by the company as being unduly burdensome. This provision requires that the cable company video tape or record photographically in some way every street prior to construction. Such evidence is utilized in the Hearing Officer complaint process to prove whether or not the homeowner has suffered damages as a result of cable construction. We have no objection to leaving this requirement optional as long as the burden of proof during the hearing process or subsequent lawsuits is shifted entirely to the franchisee. Therefore, staff would recommend such a change.

3. 24-Hour News Service.

Under the existing agreement, three and a half years from now or when there are 100,000 subscribers, the cable company must provide a 24-hour local news channel unless, after placing it on the system for one year, it is proven to be commercially unsuccessful. Because of the startup cost, the company wishes to be permitted to test the marketplace and have such a determination made prior to hiring personnel and initiation of the 24-hour local news channel. As you will recall, staff's analysis of the original bid expressed concern that because of the amount of news available in the Sacramento market this news service was marginal and consented to such a test of its removal. We have no objections to undertaking the test earlier as long as it is done by one of the Big Eight accounting firms. Further, it is recommended that the resolution provision regulating the associated staffing requirements be deleted. It is my view that if the test shows the local news service is not commercially viable, we ought to have the option of reviewing this matter every three years thereafter throughout the 20-year term.

Should you agree to approve these modifications, I have been assured that construction will commence in approximately seven to ten days and that it will occur throughout the Imposed Service Area. We are very pleased with the progress made by E. W. Scripps, Scripps-Howard Broadcasting and Sacramento Cable Television to date and particularly want to express our appreciation to Mike Callaghan, Gil Champagne and Dick Davis for the many hours of work that were necessary to reach agreement on all these issues.

It is, therefore, my recommendation that:

- (1) The Board of Supervisors and the City Council adopt the attached resolution reflecting approval of all technical changes and clarification of the Franchise Documents reported in this document.

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March 7, 1985  
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- (2) Once approved by the two legislative bodies that the Commission adopt a similar resolution with the additional provision of recommending that the respective Public Works Departments meet with the cable franchisee to discuss front yard, underground construction.
- (3) Each of the legislative bodies recommend to the City Councils of Folsom and Galt that they not object during the next 30 days to the adoption of the Commission's amended resolution.

  
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BOB SMITH, Executive Director  
Sacramento Metropolitan Cable  
Television Commission

RES:ab

Attachment

85-128

PRELIMINARY DRAFT  
FOR DISCUSSION PURPOSES ONLY

RESOLUTION NO. 85-006

A RESOLUTION OF THE SACRAMENTO METROPOLITAN CABLE TELEVISION COMMISSION APPROVING AN ALTERNATE SYSTEM DESIGN FOR SACRAMENTO METROPOLITAN CABLE TELEVISION SYSTEM SUBJECT TO CERTAIN CONDITIONS AND MAKING CERTAIN CHANGES IN THE CABLE FRANCHISE RESOLUTION.

WHEREAS, the Board of Supervisors of the COUNTY OF SACRAMENTO ("the COUNTY") and the City Council of the CITY OF SACRAMENTO ("the CITY") did adopt resolutions authorizing the COMMISSION to offer a cable television franchise; and

WHEREAS, this COMMISSION adopted its Resolution No. 83-023 on November 22, 1983 ("the Franchise Resolution") offering a cable television franchise to CABLEVISION OF SACRAMENTO; and

WHEREAS, said franchise was accepted; and

WHEREAS, the COMMISSION has from time to time amended certain provisions of the aforesaid Resolutions including approving a transfer of control of the franchisee and a change of name to SACRAMENTO CABLE TELEVISION ("the FRANCHISEE"); and

WHEREAS, pursuant to the provisions of Section II A 2., Alternative System Design, as amended, the FRANCHISEE has submitted a proposed revision of the design of the system, a copy of which is attached hereto and incorporated herein by reference as Exhibit "A"; and

WHEREAS, the COMMISSION has retained an engineer to study, evaluate and analyze the proposed revision of the design; and

WHEREAS, the engineer has reported to the COMMISSION on the matter of the proposed revision's equality to or superiority to the original design contained in the Application, a copy of which is attached hereto and incorporated herein by reference as Exhibit "B"; and

WHEREAS, the COMMISSION finds it appropriate to amend certain provisions of the Franchise Resolution in order to clarify the rights, duties, and obligations of the COMMISSION, the COUNTY, the CITIES, and the FRANCHISEE; and

WHEREAS, the COMMISSION has conducted a properly noticed public hearing to receive additional evidence concerning the proposed amendments to the Franchise Resolution and revision of the design; and

WHEREAS, the COMMISSION has duly considered the proposed

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revision of the design, together with the report, evaluation and analysis of the COMMISSION's engineer and such other and additional evidence as has come before it in the noticed public hearing; and

WHEREAS, this COMMISSION desires to adopt certain amendments to the Franchise Resolution and to approve the proposed revision of the design upon the terms and subject to the conditions hereinafter set forth;

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO METROPOLITAN CABLE TELEVISION COMMISSION THAT:

1. Subparagraph b (1) of Section II A 2 is hereby amended and restated as follows:

"(1) A certification by the Chief Executive Officer of the Franchisee stating in clear and unequivocal terms that, to the best of his knowledge and belief, the proposed revision of the design is in all aspects, including but not limited to quality, anticipated useful life and performance characteristics, equal to or superior to the design set forth in the Application in that:

a. the quality and performance characteristics of each aspect of the signal under the proposed system design, as delivered to the ultimate user, will be of at least the same quality and performance characteristics (including without limitation consideration of its strength, definition, integrity and discreteness) as the corresponding aspect of the signal which would have been so delivered under the design specified in the Application; and

b. the reliability of each aspect of the signal under the proposed system design, as delivered to the ultimate user, will be of at least the same degree of reliability (including without limitation consideration of the influence of atmospheric, topographic and competitive signal factors which may reasonably be anticipated to be found within the franchise area or any portion of it during the franchise term; and

c. the capacity of the system will be such as to be capable of delivery of such volumes of programming and other services to the community, as to both

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existing and reasonably foreseeable future programming and services, as the COUNTY and the CITY acting jointly have determined is necessary, appropriate and in the best interests of the Sacramento community; and"

2. This COMMISSION finds and determines, based upon all of the evidence presented and available to it, that the FRANCHISEE has shown by clear and convincing evidence that the proposed revision of the design, in its ultimate configuration, is in all aspects, including but not limited to quality, anticipated useful life and performance characteristics, equal to or superior to the original design contained in the Application in that:

a. the quality and performance characteristics of each aspect of the signal under the proposed system design, as delivered to the ultimate user, will be of at least the same quality and performance characteristics (including without limitation consideration of its strength, definition, integrity and discreteness) as the corresponding aspect of the signal which would have been so delivered under the design specified in the Application; and

b. the reliability of each aspect of the signal under the proposed system design, as delivered to the ultimate user, will be of at least the same degree of reliability (including without limitation consideration of the influence of atmospheric, topographic and competitive signal factors which may reasonably be anticipated to be found within the franchise area or any portion of it during the franchise term; and

c. the capacity of the system will be such as to be capable of delivery of such volumes of programming and other services to the community, as to both existing and reasonably foreseeable future programming and services, as this COMMISSION has determined is necessary, appropriate and in the best interests of the Sacramento community.

3. This COMMISSION hereby approves the FRANCHISEE's proposed revision of the design of the system as set forth in the attached Exhibit "A", and hereby incorporates such revision into the Franchise Resolution and, to the extent that it is expressly inconsistent with the design of the system as set forth in the Application, the provisions of Exhibit "A" hereto

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shall prevail over the terms of the Application and the Franchise Resolution, PROVIDED THAT the foregoing approval shall in no way operate to relieve the FRANCHISEE to any degree whatsoever of its obligation to meet and comply strictly with each and every technical test, review and specification as set forth in the Franchise Resolution including without limitation signal testing, Federal Communications Commission standards, technical standards and equipment substitution procedures, unless such technical test, review or specification is expressly altered, amended or deleted herein.

4. This COMMISSION hereby expressly finds and determines that it would not have approved the temporary use of a four hundred fifty (450) megahertz system as set forth in Exhibit "A" but for the assurance of the FRANCHISEE of the installation of a five hundred fifty (550) megahertz system as soon as it is, in the judgement of this COMMISSION and as hereinafter provided, reliable in accordance with the terms hereof. Accordingly, by the filing of a Certificate of Acknowledgement and Undertaking hereto as required by Paragraph 18d. of this Resolution below, the FRANCHISEE, the named owners thereof and SCRIPPS HOWARD BROADCASTING COMPANY do hereby agree that the terms hereof shall be liberally construed to accomplish the purposes hereof and to require the installation of the five hundred fifty (550) megahertz system described in Exhibit "A" hereto, or such other system design as may be from time to time approved by this COMMISSION pursuant to Sections II A 2 and VI E 24 of the Franchise Resolution.

5. Section VI A 1 of the Franchise Resolution is hereby amended to read as follows:

\*1. Subscriber Network. The Subscriber Network shall:

a. Consist of one cable with a frequency spectrum of 5-550 megahertz with:

(1) at least four (4) six (6) megahertz channels upstream within a frequency spectrum of 5-30 megahertz; and

(2) at least seventy seven (77) six (6) megahertz video channels downstream within a frequency spectrum of 50-550 megahertz, provided that pursuant to the provisions of Paragraph 19 of this Section VI below, the FRANCHISEE may initially activate the system to

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four hundred fifty (450) megahertz.

6. The second paragraph of Section VI B 3 of the Franchise Resolution is hereby amended to read as follows:

"The FRANCHISEE shall utilize the Subscriber Network Cable to provide Home Entertainment; Educational; and Home Non-Entertainment Services in four tiers or packages as follows:

7. Section VI of the Franchise Resolution is hereby amended by adding a new Section E thereto after the existing Section D as follows:

"E. TEMPORARY ACTIVATION OF SYSTEM AND CONDITIONS UPON ULTIMATE ACTIVATION

19. The Upgrade Order. The FRANCHISEE shall be permitted initially to activate the system only to four hundred fifty (450) megahertz, providing thereby not less than sixty-two (62) video channels. The COMMISSION may meet from time to time to consider the need for additional spectrum capacity beyond the capability of the system at four hundred fifty (450) megahertz. The COMMISSION shall give the FRANCHISEE written notice of the time, date, place, and purpose of any such meeting in accordance with Section 5.50.024 of the Ordinance. The FRANCHISEE shall be permitted at such meeting to address all matters which are the subject of such notice. If the COMMISSION determines, in accordance with the foregoing provisions and in its sole discretion, that there is a need for additional spectrum capacity, the COMMISSION shall issue and mail to the FRANCHISEE the upgrade order as hereinafter defined. It is the intention of this COMMISSION, the BOARD, the COUNCIL, the FRANCHISEE, and the named owners thereof to upgrade the system to its ultimate activation level of five hundred fifty (550) megahertz at the earliest possible date, but in no event more three hundred sixty five (365) days after the issuance by the COMMISSION of an order (the "upgrade order") to the FRANCHISEE to upgrade the system to its ultimate activation level of five hundred fifty (550) megahertz, subject to the right of the FRANCHISEE to establish

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non-reliability pursuant to Paragraph 21 below.

20. Franchisee's Establishment of Non-reliability. The COMMISSION may at any time during the term of the franchise and in its sole discretion, but not more than once within any twelve (12) consecutive months during such term, after notice to the FRANCHISEE pursuant to Section 5.50.024 of the Ordinance, issue an upgrade order to the FRANCHISEE causing the upgrade of the system to its ultimate activation level of five hundred fifty (550) megahertz, subject ONLY to the right of the FRANCHISEE to establish non-reliability pursuant to Paragraph 21 below.

21. Non-Reliability Defined. Upon the issuance of an upgrade order by the COMMISSION pursuant to Paragraphs 19 and 20 above, the FRANCHISEE may forestall the application of its obligation to upgrade the level of activation of the system to five hundred fifty (550) megahertz ONLY by establishing, within sixty (60) days of the issuance of such an order, by clear and convincing evidence that one or more of the following conditions have been met and continue to exist:

a. The mean time to failure for a five hundred fifty (550) megahertz amplifier manufactured by the manufacturer of the FRANCHISEE's four hundred fifty (450) megahertz amplifiers (the "FRANCHISEE's manufacturer") is LESS than the mean time to failure for any four hundred fifty (450) megahertz amplifier theretofore installed by the FRANCHISEE in the system. The "mean time to failure" for amplifiers of FRANCHISEE's manufacturer shall be determined only by reference to published statistics of FRANCHISEE's manufacturer available to the cable industry generally.

b. The average number of service calls related to system failure per plant mile in all five hundred fifty (550) megahertz systems throughout the country shall be EQUAL TO or LESS than the average number of service calls related to system failure per plant mile in all four hundred fifty (450) megahertz systems throughout the country, when the maximum

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statistical inaccuracy derived from the applicable sampling technique is assumed and excluded from consideration. The "average number of service calls related to system failure... throughout the country" shall be determined only by reference to published figures, generally accepted within the cable industry, and based upon generally accepted statistical sampling techniques.

c. The FRANCHISEE's manufacturer (i) has not installed MORE than three thousand (3,000) miles of five hundred fifty (550) megahertz system plant which has been operating for at least twenty-four (24) consecutive months, or (ii) has not installed at least one system with at least eight hundred (800) miles of five hundred fifty (550) megahertz system plant which has been operating for at least twenty-four (24) consecutive months.

d. The FRANCHISEE's manufacturer is unable to guarantee that the FRANCHISEE's manufacturer can deliver as a standard production item five hundred fifty (550) megahertz amplifiers which (provided that such data is available) meet the reliability standard set forth in subparagraph a. above, meaning that FRANCHISEE's manufacturer can deliver at least five thousand (5,000) such five hundred fifty (550) megahertz amplifiers per month for a period of at least twenty four (24) consecutive months.

e. The installation of five hundred fifty (550) megahertz amplifiers would require a complete replacement of the then existing amplifier housings.

22. Disputes Regarding Reliability. Upon receipt of notice from the FRANCHISEE that the FRANCHISEE asserts the non-reliability of a five hundred fifty (550) megahertz system, the COMMISSION shall establish a hearing for the purpose of receiving the FRANCHISEE's evidence of non-reliability referred to in Paragraph 21 above. Upon receipt of such evidence, if the COMMISSION finds and determines that the FRANCHISEE has established by clear and convincing evidence that a five hundred fifty (550)

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megahertz system is not reliable pursuant to the provisions of Paragraph 21 above, the upgrade order shall forthwith be null and void. If the COMMISSION finds and determines that the FRANCHISEE has NOT established by clear and convincing evidence that a five hundred fifty (550) megahertz system is not reliable pursuant to the provisions of Paragraph 21 above, the COMMISSION shall thereupon issue an order confirming its upgrade order and its finding of the lack of the FRANCHISEE's establishment of non-reliability (the "reliability order"). Thereupon, the FRANCHISEE shall have thirty (30) days to give written notice to the COMMISSION that the FRANCHISEE is submitting the matter of the COMMISSION's reliability order to arbitration pursuant to the provisions of Paragraph 23 below. If the FRANCHISEE fails to give such a notice in a timely fashion, the COMMISSION's reliability order shall become final and binding upon the FRANCHISEE.

23. Arbitration Proceedings . With respect to any arbitration proceeding conducted pursuant to the provisions of Paragraph 22 of this Section VI, the arbitration panel shall be selected, the hearing scheduled within the time prescribed, notice given, the hearing conducted, decision made and costs divided in the manner prescribed by Sections 5.50.830 through 5.50.840, inclusive, of the Ordinance. The questions which may be submitted to the arbitration panel and the jurisdiction of the arbitration panel shall be limited to the following:

a. The interpretation of the provisions of the Franchise Documents solely in relation to the decision required by b. below; and

b. Whether or not the FRANCHISEE established before the COMMISSION by clear and convincing evidence that a five hundred fifty (550) megahertz system is not reliable under one or more of the tests set forth in Paragraph 21 above.

The determination of the arbitration panel shall be final, binding and conclusive upon the parties, and shall not be subject to judicial review or vacation except on the grounds set forth in Section 1286.2 of the Code of Civil Procedure.

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24. Alternative Technology . Notwithstanding the provisions of this Section E of this Section VI, the FRANCHISEE may apply at any time under the provisions of Section VI A 2 for a revision of the design of the system to accomplish the purposes hereof by means of alternative technology. Nothing in this Paragraph shall be construed to limit or diminish the discretion of the COUNTY and the CITY acting jointly under the aforementioned section in its consideration of such a proposed alternative system design."

8. Section II A 6 a. of the Franchise Resolution is hereby amended by deleting therefrom the first sentence thereof.

9. Section III of the Franchise Resolution is hereby amended by deleting therefrom Paragraph 8 thereof.

10. Section VI A 2 of the Franchise Resolution is hereby amended and restated in its entirety as follows:

"2. Institutional Usage of Subscriber Network and Institutional Network.

a. Institutional Usage of Subscriber Network. The FRANCHISEE shall utilize up to twenty (20) megahertz of the Subscriber Network for Institutional uses until such time as the Institutional Network is constructed pursuant to subparagraph b hereof.

b. Institutional Network. The FRANCHISEE shall, from time to time hereafter, as required below, immediately begin construction of an Institutional Network, consisting of one (1) institutional cable which shall cover approximately two hundred (200) miles within the Imposed Service Area and with at least forty-nine (49) six (6) megahertz video channels within a frequency spectrum of 30-400 megahertz, at such time as the institutional usage of the Subscriber Network results in either of the following conditions:

(1) For a period of at least thirty (30) days, at least ninety percent (90%) of the FRANCHISEE's data channels on the subscriber network which may be utilized for institutional purposes pursuant to subparagraph a above are

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utilized between the hours of 8:00 a.m. and 5:00 p.m. on business days Monday through Friday, or

(2) A bona fide contract for the utilization of institutional services at commercially reasonable rates has been offered to the FRANCHISEE and, if accepted, when added to the then existing institutional usage of the subscriber network, the total of such existing and additional institutional usage would exceed the twenty (20) megahertz band of the subscriber network which may be utilized for institutional purposes pursuant to subparagraph a above.

In the event of the occurrence of condition (1) or (2) above, the FRANCHISEE shall construct a segment of the Institutional Network as may be necessary to relieve conditions (1) and (2) above, as the case may be, but in no event less than forty (40) miles or such less distance as the COMMISSION may in its sole discretion approve. Notwithstanding the foregoing sentence, the FRANCHISEE shall construct a first segment of the institutional network capable of delivery of all of the then existing institutional usage of the Subscriber Network. After construction of the first segment of the Institutional Network, the FRANCHISEE shall not thereafter, without the further express permission of the COMMISSION, utilize any portion of the Subscriber Network for institutional usage.

The FRANCHISEE shall at times use all reasonable efforts in good faith to develop a demand for and market the capacity of an Institutional Network.

Nothing contained in this Paragraph 2 shall be deemed or construed to reduce or diminish to any extent whatsoever the obligations of the FRANCHISEE to make available certain spectrum space to the Sacramento County Corporation for Educational Telecommunications (SCCET), also known as the Educational Consortium, for institutional usages pursuant to the Application or any contract by and between the FRANCHISEE and SCCET which may now or hereafter exist."

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11. Section VI D 14 of the Franchise Resolution is hereby amended by adding the following sentence to the end thereof:

"The foregoing obligation shall be subject, in all respects, to the provisions of Paragraph A 2 of this Section VI."

12. Section V A 10 a. of the Franchise Resolution is hereby amended by deleting therefrom the words "...twentieth (20th)..." and substituting therefor the words "...twenty-sixth (26th)..."

13. Subparagraph a of Section V B 17 of the Franchise Resolution is hereby amended by deleting therefrom the words "...commencement of the second year..." and substituting therefor the words "...twenty-sixth (26th) month..."

14. Paragraph 1 of Section III of the Franchise Resolution is hereby amended by adding a new subparagraph c. thereto after the existing subparagraph b. as follows:

"c. The FRANCHISEE shall, within sixty (60) days of the notification by the COMMISSION of the approval of an Alternative System Design pursuant to Section II A 2 of this Resolution, submit a revised Construction Activation Table and a revised Census Tract Progression Table which (i) take into account the effect of the alternative system design and (ii) provide for the completion of the system within the times set forth in Section 5.50.410 of the Ordinance. Thereafter, all references in this Resolution to the Construction Activation Table or the Census Tract Progression Table shall be deemed to have reference to the revised tables, as applicable, and the FRANCHISEE shall continue to be bound by the terms of this Section III as such terms then apply to such revised tables."

15. Subparagraph d. (1) of Section VI B 4 of the Franchise Resolution is hereby amended and restated in its entirety as follows:

"(1) During each year of the franchise, the Franchisee shall be expressly permitted to reduce the number of distant channels cablecast upon the system to the extent, and only to the extent, that, in the next preceding franchise year, the actual expenditures for copyright

Resolution No. 85-006

fees on distant signal channels shall not have averaged less than an amount equal to the lesser of: (1) 24.778% of the Basic Service Revenues of the system as determined herein, or (2) five dollars and ninety-five cents (\$5.95) for each person and/or entity who has been a subscriber to some or all of the home entertainment, educational and home non-entertainment services contained within the Basic tier as defined by Paragraph B 3 a of Section VI of this Resolution during the franchise year. To the extent that such expenditures in any year shall be less than the aforementioned amount, the amount of the difference shall be set aside in a copyright fee reserve. When the level of funds in such reserve added to the aforementioned amount shall be sufficient to pay the copyright fees for an additional distant signal channel, said channel shall be restored to the system until said copyright fee reserve shall be exhausted."

16. Paragraph 8 of Section IV of the Franchise Resolution is hereby amended by adding a new subparagraph h. thereto as follows:

"h. Notwithstanding the provisions of subparagraph b. above, the Franchisee may initiate a determination of the economic feasibility of The Sacramento Channel in advance of its activation, by filing with the Commission, not less than ninety (90) days in advance of the date upon which it reasonably anticipates having obtained one hundred thousand (100,000) subscribers and in any event on or before the date upon which it obtains eighty thousand (80,000) subscribers, an application for pre-activation economic feasibility determination. Thereupon, the Commission shall select and retain an expert which shall be one of the so-called "Big Eight" accounting firms, the cost of which shall be borne entirely by the Franchisee without consideration of any other amounts paid by Franchisee to the Commission under the Franchise Documents, for the purpose of estimating, by such means and techniques as said experts shall deem advisable, the "Revenues" reasonably anticipated to be derived and the "Costs" reasonably anticipated to be incurred (as those terms are defined in subparagraph b. above) during the first year of operation of the Sacramento Channel. The report of the aforesaid experts shall be submitted jointly to the Franchisee and to the Commission within sixty (60) days after submission of the application by the Franchisee. Upon submission of the report of the estimation of Revenues and Costs, the

Resolution No. 85-006

Franchisee may reduce, pursuant to subparagraph b. above, (i) the hours per day, and/or (ii) the days per week, and/or (iii) the number or types of personnel required by this paragraph to the extent required to prevent Costs from exceeding Revenues, provided that, if the aforesaid study should result in the complete elimination of the Sacramento Channel, the Commission shall be entitled to, but not required to, similarly retain such experts (at the expense of the Franchisee) at intervals of not less than every three (3) years thereafter for the balance of the franchise term for the purpose of determining whether a change in circumstances within the market would enable the introduction of the Sacramento Channel."

17. Paragraph 20 of Section IV of the Franchise Resolution is hereby amended by adding thereto a new subparagraph c. as follows:

"c. Notwithstanding the provisions of subparagraph b. above, the Franchisee may initiate a determination of the economic feasibility of The Sacramento Channel in advance of its activation, by filing with the Commission, not less than ninety (90) days in advance of the date upon which it reasonably anticipates having obtained one hundred thousand (100,000) subscribers and in any event on or before the date upon which it obtains eighty thousand (80,000) subscribers, an application for pre-activation economic feasibility determination. Thereupon, the Commission shall select and retain an expert which shall be one of the so-called "Big Eight" accounting firms, the cost of which shall be borne entirely by the Franchisee without consideration of any other amounts paid by Franchisee to the Commission under the Franchise Documents, for the purpose of estimating, by such means and techniques as said experts shall deem advisable, the "Revenues" reasonably anticipated to be derived and the "Costs" reasonably anticipated to be incurred (as those terms are defined in subparagraph b. above) during the first year of operation of the Sacramento Channel. The report of the aforesaid experts shall be submitted jointly to the Franchisee and to the Commission within sixty (60) days after submission of the application by the Franchisee. Upon submission of the report of the estimation of Revenues and Costs, the Franchisee may reduce, pursuant to subparagraph b. above, (i) the hours per day, and/or (ii) the days per week, and/or (iii) the number or types of personnel required by this paragraph to the extent required to prevent Costs

Resolution No. 85-006

from exceeding Revenues, provided that, if the aforesaid study should result in the complete elimination of the Sacramento Channel, the Commission shall be entitled to, but not required to, similarly retain such experts (at the expense of the Franchisee) at intervals of not less than every three (3) years thereafter for the balance of the franchise term for the purpose of determining whether a change in circumstances within the market would enable the introduction of the Sacramento Channel."

18. Section III of the Franchise Resolution is hereby amended by adding thereto a new Paragraph 8 as follows:

"8. Burden of Proof in Construction Disputes . If (i) the FRANCHISEE should in the course of the construction of the system elect to place underground cable plant in the public utility easement in front yards upon private property where there was, at the time of the FRANCHISEE's election, space available for the installation of such plant at the lip of the curb of the gutter within the public roadway, or (ii) the FRANCHISEE should fail, neglect or refuse to take pre-construction photography of the condition of any private property upon which underground construction is to occur, the FRANCHISEE shall have the burden of proof as to the condition of the private property prior to the initiation of such construction in any subsequent complaint resolution, arbitration or judicial procedure between the FRANCHISEE and the private property owner. It is expressly agreed by the parties hereto that the private property owner is the intended third party beneficiary of the FRANCHISEE's contractual obligations and promises under this Paragraph 8."

19. Subparagraphs e, f, and g of Paragraph 8 of Section IV of the Franchise Resolution are hereby deleted in their entirety.

20. The COMMISSION acknowledges that, pursuant to the provisions of the Ordinance, the FRANCHISEE is permitted to locate, install, and maintain the system, including wires and appurtenances, within easements or rights-of-way traversing private land of property owners. Heretofore, the Departments of Public Works of the respective jurisdictions have insisted that the system plant be installed, wherever possible, within those rights-of-way located with the public roadway at the lip of the curb of the gutter.

The FRANCHISEE has requested that the COMMISSION assist it in

Resolution No. 85-006

gaining reconsideration of the FRANCHISEE's request for approval of installation of system plant in the public rights-of-way located within front yards rather than at the lip of the curb of the gutter in the public roadway. The FRANCHISEE has indicated that the approval of such installation would result in substantial cost savings to the FRANCHISEE and further, will expedite the activation and operation of the system more efficiently.

Further, the FRANCHISEE has consented to a shifting of the burden of proof in property owner actions alleging damage to private property as a result of the installation of system plant in the front yard easements as opposed to the roadway easements.

Accordingly, the COMMISSION herewith respectfully requests and recommends that the Departments of Public Works of the respective jurisdictions review the entire matter with the FRANCHISEE with a view toward the reduction of costs of installation of the system plant. Further, the COMMISSION authorizes its staff to cooperate with said Departments and the respective Directors of Public Works in furtherance of the FRANCHISEE's proposals to locate the system plant whereof the FRANCHISEE may reasonably request, but only to the extent permitted by, and in accordance with, all of the terms and conditions of the Franchise Documents, including without limitation the required restoration of any private property so utilized to its original condition.

Further, the COMMISSION respectfully recommends to the respective Departments of Public Works that due consideration be given to pre-approval of larger segments of the underground construction area.

Nothing contained in this Section shall be deemed to waive, excuse or mitigate to any degree whatsoever, any non-performance by the FRANCHISEE in the event that one or more of the respective Departments of Public Works of the respective jurisdictions should disallow the FRANCHISEE's request.

21. The provisions of this Resolution shall not be effective for any purpose unless and until:

- a. The City Council of the CITY OF SACRAMENTO adopts a Resolution amending its Resolution 83-920, adopted on November 22, 1983, to include provisions identical to the amendments made to Resolution No. 83-023 of this

Resolution No. 85-006

COMMISSION by this Resolution; and

b. The Board of Supervisors of the COUNTY OF SACRAMENTO adopts a Resolution amending its Resolution No. 83-1450, adopted November 22, 1983, to include provisions identical to the amendments made to Resolution No. 83-023 of this COMMISSION by the adoption of this Resolution; and

c. The City Council of the City of Folsom and the City Council of the City of Galt have each adopted a Resolution approving the adoption of this Resolution within thirty (30) days from the date hereof; and

d. The FRANCHISEE, the named owners thereof and SCRIPPS HOWARD BROADCASTING COMPANY have approved, accepted and agreed to the provisions of this Resolution for themselves, their successors, assigns and guarantors by submitting a Certificate of Acknowledgement and Undertaking in a form identical to that attached as Exhibit "C" hereto.

ON A MOTION by Commissioner \_\_\_\_\_,  
seconded by Commissioner \_\_\_\_\_, the  
foregoing resolution was passed and adopted this 7th day of  
March, 1985, by the following vote, to wit:

AYES:

NOES:

ABSENT:

**Resolution No. 85-006**

**Chairman, Sacramento Metropolitan  
Cable Television Commission**

**ATTEST:** \_\_\_\_\_

**Clerk of the Commission**

## SACRAMENTO METROPOLITAN



**Cable  
Television  
Commission**

SUITE 2500, 700 'H' ST., SACRAMENTO, CA 95814 • (916) 440-6661

ROBERT E. SMITH  
EXECUTIVE DIRECTOR

February 28, 1985

For Commission Meeting of:  
March 7, 1985

To: Sacramento Metropolitan Cable Television Commission

From: Bob Smith, Executive Director

Subject: PREVAILING WAGE RATE REPORT - TOUCHE ROSS & COMPANY

Touche Ross has reported that sufficient data has been collected to establish wage rates for construction positions used by the Franchisee. However, their efforts to obtain sufficient responses from cable television contractors and labor organizations appear only partially successful and, thus, request more time to build a valid database for the wage rates of all of the contractor positions.

The problem of too few responses of contractors surfaced last year, and even with assistance of the local contractors and labor organizations this year, there may still be insufficient data. Several contractors and labor organizations have promised responses, but as of Thursday, February 28, 1985, they have not arrived. Touche Ross has made several follow-up calls over the past week, and, because of the importance of these responses to the determinations, Touche Ross wishes to wait one more week before finishing their report. Therefore, the presentation at the March 7th meeting will cover only methodology and analytical procedures, and the final wage determinations will be available by March 15, 1985.

As a reminder, Touche Ross & Company, as the Commission appointee, is solely responsible for establishing the 1985 Wage Rates and their wage determinations are not subject to review or approval by your Commission.

Lastly, the attached letter from William Meehan, Business Manager of the Sacramento Sierra's Building and Construction Trades Council, questions the establishment of position classifications by contractors. As the determination of position classifications for the Prevailing Wage Rate Study is the responsibility of the Franchisee and our consultants, it is recommended that this letter be referred to Touche Ross and Sacramento Cable Television for their review, comment, and recommendation.

Therefore, it is recommended that you hear Touche Ross & Company's presentation on the 1985 Prevailing Wage Rates and refer the letter of Mr. William Meehan to Touche Ross for comment.

A handwritten signature in cursive script that reads "Bob Smith".

Bob Smith, Executive Director  
Sacramento Metropolitan Cable  
Television Commission

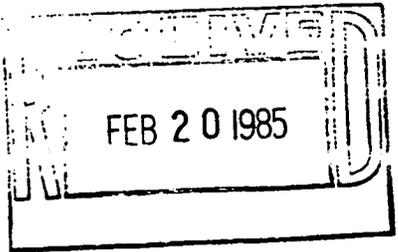
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Attachment  
85-125-67

*Bob* \_\_\_\_\_  
*RE* \_\_\_\_\_

# SACRAMENTO-SIERRA'S BUILDING AND CONSTRUCTION TRADES COUNCIL

(Sacramento, Yolo, Amador, Placer, El Dorado, Nevada and Sierra Counties)

WILLIAM MEEHAN, Secretary-Business Manager • (916) 422-2623 • Labor Center, 2245 Florin Road, Suite 6 • Sacramento, CA 95822



February 19, 1985

Mr. Bob Smith, Executive Director  
Sacramento Metropolitan Cable  
Television Commission  
700 H Street, Suite 2500  
Sacramento, CA 95814

Dear Mr. Smith:

Organized labor has, from the signing of the original franchise, been particularly upset with the ambiguous wording used in describing the "Prevailing Rate Standard".

The interpretations have consistently allowed the contractors to arbitrarily establish classifications which prevent any established union contractor from effectively bidding on the work.

Therefore, if in the process of changing the franchise that modification or renegotiation is being considered, then I believe our input is just to once and for all put the issue to rest.

Very truly yours,

William Meehan  
Business Manager

WM:bb  
opeu #29  
afl-cio  
cc: Terry Kastanis  
Ted Sheedy

ROBERT E. SMITH  
EXECUTIVE DIRECTOR

February 26, 1985

For Commission Meeting of:  
March 7, 1985

To: Sacramento Metropolitan Cable Television Commission  
From: Bob Smith, Executive Director  
Subject: GOVERNMENT PROGRAMMING ANNUAL PLAN FOR 1985/86

The Government Programming Contract executed January 17, 1985 requires that the Cable Commission submit an annual plan for the utilization of the 1985 grant to the cable company within ninety (90) days. In addition, the Joint Powers Agreement between the Commission and the jurisdictions require the Commission to submit an Annual Budget Plan for their approval prior to forwarding this document to the cable company. Since the 1984/85 Fiscal Year Plan has already been approved, the attached budget encompasses the 1985/86 Fiscal Year. Approving this plan authorizes staff to seek budget approval from the jurisdictions for submission to the cable company.

Because grant funds from the company are dispensed on a calendar year basis and the jurisdictions must approve budgets by fiscal year, the attached plan encompasses a 1½-year minimum grant from the cable company, or \$37,500. As indicated in the six year plan submitted to you last year, staff is recommending purchase of a portable production package and an editing system to be shared by all the jurisdictions. The purchase of this equipment will enable jurisdictions to cablecast a limited amount of government events, programs about department services, and public service announcements for the cable system.

In addition, a video cassette recorder and TV monitor is suggested for location at two jurisdictions. (Equipment for the remaining two jurisdictions is scheduled for purchases in the next budget cycle.) Purchase of this equipment for the jurisdictions will be subject to a utilization review prepared by a Municipal Programming Task Force.

This Task Force will consist of a representative selected by each City Manager and the County Executive. It will work closely with staff to develop procedures for use of the resources and encourage the utilization of these resources by staff within their respective jurisdictions. It is anticipated that the first meeting of this Task Force will take place in March and will focus on the utilization of the alphanumeric system, and preparation of a utilization review for each participating jurisdiction.

Cable Television Commission  
Page 2

Programming for 1985 will consist primarily of alphanumeric messages prepared by each of the jurisdictions. After the formation of the Task Force, a schedule of programs produced outside of Sacramento County, but of interest to residents, will be presented to the Commission. Once the production equipment outlined in the budget is purchased, the Task Force can begin plans for the production of locally-produced government programming.

Upon approval of this 1985/1986 Annual Plan by the Commission, staff will request approval from each jurisdiction and then submit the plan to the cable company as required by the contract.

Therefore, staff recommends approval of the attached Annual Plan for Fiscal Year 1985/86 which includes authorization to expend \$37,500 in grant money as outlined in Part A of the Plan.

  
Bob Smith, Executive Director  
Sacramento Metropolitan Cable  
Television Commission

RES:kl

Attachment

85-100

ANNUAL PLAN FOR 1985/86

A. Planned expenditure of operating grants. (Based on minimum grant of \$37,500; \$25,000 for calendar year 1985, \$12,500 for the first half of 1986)

I. Fixed Assets

A. Central Equipment Pool

(1) Portable Production Package:

3/4" portable VCR	\$ 3,000
3-tube color television	7,000
Tripod with head + dolly	500
Portable 5" monitor	500
Portable light kit	500
Microphone kit	600
Cables, batteries, AC adapters/charger	800
Equipment cases	<u>500</u>

Total \$ 13,400

(1) Editing System:

3/4" Source VTR	\$ 4,500
3/4" Editor VTR	6,000
Editor Controller	2,000
(2) 9" color monitors	1,000
Connecting cables/equipment racks	<u>500</u>

Total Editing System \$ 14,000

B. Equipment for Jurisdiction\*

(2) Video cassette recorder/players (\$2,300 each)	\$ 4,600
(2) Color monitor/receivers	1,000
(2) Equipment stands (\$250 each)	<u>500</u>

Total Jurisdiction Equipment \$ 6,100

TOTAL FIXED ASSETS \$ 33,500

II. Services and Supplies

Insurance	\$ 1,500
Maintenance/repair	1,000
Video tape	1,000
Spare lamps, adapters, Cleaning supplies	<u>500</u>

TOTAL SERVICES & SUPPLIES \$ 4,000

\*Subject to utilization review by Municipal Programming Task Force.

III. Programming

Any savings realized from competitive bidding or reduced vendor prices will be used for program acquisition.

T O T A L . . . . . \$ 37,500

B. Number of Programs and Program Hours Planned for Production.

For 1985, the government access channel will contain primarily alphanumeric programming about government information and services. Based on availability and budget considerations, a limited number of acquired programs may be shown on the channel. Since production equipment will not be completely acquired until the end of 1985, no locally produced programs are being planned for that year.

The production equipment purchased by 1986 will allow limited coverage of government events and production of public information programs. Specific programs will be developed by the Municipal Programming Task Force for approval by the Commission. A TV and video cassette recorder is suggested for purchase by the jurisdiction to playback videotapes and record programs from the cable system. However, the Municipal Programming Task Force may suggest other equipment based on a review of their needs.

C. Staff Requirements.

Programs distributed from the headend will require a playback operator on a scheduled basis. This will be provided by the cable company as part of their in-kind staff grants. Coordination of municipal programming will continue under the direction of existing Commission staff. Based on production demand beginning in 1986, part-time student interns may be utilized by the Commission to assist jurisdictions in program production.

D. Number of Program Acquisitions Planned to Borrow or Purchase.

The Commission staff will research the availability of acquiring rental programs for distribution on the government channels. Based on this research, in conjunction with the Municipal Programming Task Force, a recommended schedule of hours will be presented to the Commission for their approval.

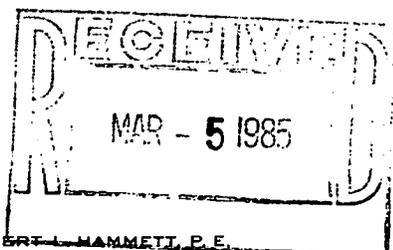
E. Planned Equipment Purchases. See Item A, Budget.

F. Statement of Programming Goals.

The contract between the Cable Commission and Sacramento Cable Television requires a Statement of Programming Goals to be submitted. Staff is recommending the following statement:

"The overall goal of the Government Access Channel is to improve the delivery of government services or efficiency of government operations. Specific objectives include:

- a) To provide comprehensive information about programs and services offered by government departments, agencies, Boards, Commissions, and government supported agencies;
- b) To expand citizen awareness of local government and its decision-making processes;
- c) To enhance and make more cost effective existing public information materials and utilize cable TV as an effective public information tool;
- d) To produce and distribute programming that will inform, educate, enlighten and encourage feedback from community residents."



HAMMETT & EDISON, INC.  
CONSULTING ENGINEERS  
RADIO AND TELEVISION

ROBERT L. HAMMETT, P. E.  
EDWARD EDISON, P. E.  
ROBERT P. SMITH  
F. PAUL MONACO  
DAVID J. PINION, P. E.  
  
RALPH G. GROVER  
DANE E. ERICKSEN, P. E.

BOX 68, INTERNATIONAL AIRPORT  
SAN FRANCISCO, CALIFORNIA 94128  
  
AREA CODE 415  
342-5208  
  
1400 ROLLINS ROAD  
BURLINGAME, CALIFORNIA 94010

March 4, 1985

FEDERAL EXPRESS

Mr. Robert E. Smith  
Executive Director  
Sacramento Metropolitan Cable  
Television Commission  
700 H Street, Room 2500  
Sacramento, California 95801-1280

Dear Bob:

This letter will provide our recommendations in regard to the Sacramento Cable Television Alternative System Design Request of February 20, 1985. Subject to the stipulations and conditions which follow, it is our recommendation that the alternative system design for a 550 MHz single-cable system for Sacramento be approved.

550 MHz Plant Initially Activated To 450 MHz

Sacramento Cable Television (SCT) proposes a single-cable subscriber network with trunk and feeder amplifiers spaced for 550 MHz, but initially activated only to 450 MHz.

SCT has provided Hammett & Edison with amplifier specifications and calculations for various combinations of conventional push-pull, power-doubling, and feed-forward amplifier technologies. Based upon these technical specifications, and the stipulation by SCT that it will select as a minimum configuration a combination of active electronics meeting or exceeding a 46.7 dB carrier-to-noise ratio, a -57.8 dB cross-modulation ratio, and a -55.8 dB composite-triple-beat ratio at 550 MHz, the following technical performance is predicted at the most distant subscriber terminal:

	<u>At 450 MHz</u>	<u>At 550 MHz (when activated)</u>	<u>Resolution Minimum</u>
Carrier-to-noise ratio	47.9 dB	46.6 dB	45.4 dB
Cross-modulation ratio	-56.1	-55.9	-51.3
Composite-triple-beat ratio	-54.8	-54.0	-53.3

The above figures include the effects of the proposed AM microwave distribution system in the unfaded state. Because of the improved performance of power-doubling and feed-forward amplifiers, and the addition of two hubs to compensate for the reduced "reach" of a 550 MHz system compared to a 400 MHz system, it is possible to obtain an improvement in the net system performance.

#### Change to Master Hub Design

SCT now proposes a master hub design, utilizing AM microwave to distribute programs to six hubs. Five hubs would serve Sacramento City and County and Folsom, and a sixth hub would serve Galt. A single satellite receive-only facility would be installed at the downtown master hub, with microwave distribution of satellite signals to other hubs, as opposed to satellite receiving facilities at each hub. We have reviewed in detail the Hughes proposal for an 80-channel microwave system. We recommend accepting an all-AML microwave distribution system for the Sacramento system subject to the following conditions:

1. The Folsom and Galt paths must employ "space-combining" techniques to increase the effective transmit power, and must utilize at least 10-foot diameter transmit and receive antennas.
2. The Carmichael path, and any other path exceeding 10 miles, may be required to utilize space-combining techniques and 10-foot diameter transmit and receive antennas, if deemed necessary by Hammett & Edison.
3. A revised frequency coordination study must be performed, to correct for geographical coordinate errors in the initial study, and the apparent discrepancies in the frequency coordinator's data base for various broadcast microwave facilities in the 13 GHz band must be resolved to our satisfaction.
4. The frequency coordination study must successfully clear at least 53 six-MHz video channels plus spectrum for the FM broadcast band, and these channels be successfully licensed by the Federal Communications Commission. To this end, it is imperative that SCT immediately file for the cleared frequencies.
5. Each microwave receive site must employ hot-standby receiving facilities, with the appropriate switching capabilities. The master-hub must employ hot-standby equipment for those critical portions of the microwave transmitter which could cause a system-wide outage.
6. Tests must be conducted on the 20-mile Folsom path and the 24-mile Galt path for a summer period of up to three months, utilizing a strip chart recorder and the actual antennas which will be permanently installed, to verify that satisfactory path performance exists. In the event that

Hammett & Edison concludes that such tests reveal unacceptable reliability, SCT must agree to take mitigating measures, including installation of diversity receiving antennas, construction of a stand-alone headend or such other steps as deemed necessary by Hammett & Edison to insure satisfactory reliability.

### Path Reliability Calculations

It is possible to estimate the reliability of a given microwave path if certain parameters are known. The model for estimating reliability due to multipath fading is based upon work by Barnett and Vigants of Bell Telephone Laboratories and considers frequency, path length, fade margin, intervening terrain, and climate. The fade margin is a measure by which the received signal, under normal (non-faded) conditions, exceeds the level necessary for a given signal-to-noise ratio. The model for estimating reliability due to rain attenuation is based upon the International Radio Consultative Committee (CCIR) model and Crane's model for effective path length. While these models for estimating reliability of a microwave system are in common usage, it should be realized that they are estimates.

For the Folsom microwave path a comparison has been made of the estimated reliability of the AM microwave system now proposed to the FM microwave system originally proposed, with the following results:

	<u>Original Proposal</u>	<u>Present Proposal</u>
Estimated reliability to 33.2 dB carrier-to-noise ratio ("signal outage" criteria)	>99.999% 0.01 hours/year 0.1 seconds/day	>99.999% 0.09 hours/year 0.9 seconds/day
Estimated reliability to 45.0 dB carrier-to-noise ratio	99.993% 0.65 hours/year 6.4 seconds/day	99.965% 3.3 hours 33 seconds/day
Estimated reliability to 45.4 dB carrier-to-noise ratio (Resolution minimum)	99.940% 5.3 hours/year 52 seconds/day	99.953% 4.1 hours/year 40 seconds/day

Some comments on the above numbers are appropriate. A fade margin of 40 dB or greater is considered desirable in a microwave system, and a system reliability figure of 99.99% is recommended by Electronics Industries Association Standard RS-250-B. While 99.99% reliability may appear to be extremely high, this still represents 53 minutes of outage per year, although the outage would not be expected to occur in a single 53-minute incident. Although the AM microwave system now proposed has an estimated reliability during deeper fades which is several times

worse than the originally-proposed FM microwave system, the AML system still exceeds the RS-250-B standard; it is our opinion that the difference is not significant. It is our judgment that, given the stipulations discussed above, the all-AML microwave distribution system is of comparable reliability to the microwave system originally proposed. Due to the use of high-power AML transmitters and space-combining techniques, the estimated reliability for the path to Galt improves over the original proposal.

We wish to clearly state that on the longer microwave paths, there is a possibility of a propagation anomaly referred to as "beam bending", which is not considered in the multipath and rain attenuation models. Beam bending may occur when the microwave signal passes through relatively stagnant air with different refractive indices, causing the beam to be refracted, or bent, from the expected path. Because there is no recognized model for predicting this phenomenon, we are conditioning our recommendation on the inclusion of path tests for Folsom and Galt, to be conducted at appropriate seasons.

#### Tower Required for Galt

Because of the increased length of the path to Galt, the proposed receive antenna height on the Galt water tower will be insufficient to provide at least one Fresnel zone clearance. Accordingly, the Galt hub will require a tower of sufficient height to place the receive antenna at least 105 feet above ground level. Greater height would be required in the event space diversity reception is deemed necessary. The requirement for a tower at Galt may make it impractical to serve Galt during the second year of construction, as was suggested by SCT. It should likewise be noted that, if space-diversity reception is deemed necessary for Folsom, construction of a moderate height tower at the Folsom hub would probably be required.

#### Adequate System Capacity at 450 MHz

The revised channel line-up submitted by SCT proposes carriage of 52 video channels. Three more channels should be considered as committed for Channel 29 in Sacramento and Channels 58 and 64 in Stockton, which hold FCC construction permits and would be entitled to mandatory carriage. Three additional video channels should be considered as reserved to meet the requirements for 20 MHz of institutional carriage on the subscriber network. Activation of the 550 MHz single-cable system to 450 MHz would provide a 60 video channel capability, and would accommodate the 52 immediately-needed video channels, the three channels reserved for future local television broadcast stations, and three channels for institutional use.

#### Capability of Microwave System to Support 550 MHz Cable Distribution System

The Compucon frequency coordination study dated February 25, 1985, indicated that 53 video channels plus the FM broadcast spectrum could be licensed in Sacramento. Although this study must be redone to correct multiple errors in site

coordinates and power levels, we consider it likely that Community Antenna Relay Service (CARS) microwave frequencies to support at least 53 video channels plus the FM broadcast band can ultimately be obtained. In the event additional microwave frequencies for future channel expansion cannot be obtained when needed, up to 16 microwave channels could be made available by the following techniques:

- A. Utilize direct off-air pick-up at each hub of all local television stations. This could free up to nine microwave channels.
- B. Utilize direct off-air pick-up at each hub of all FM broadcast signals. This could free up to three microwave channels.
- C. Locally generate at each hub cable channel 14 (AP Sports News), cable channel 15 (AP Sports Scores), cable channel 29 (Channel Directory), and cable channel 44 (Financial News/Stock Reports/Local Time and Weather). This could free up to four microwave channels.

Assuming that at least 53 microwave channels have been licensed, by adopting the above techniques it would be possible to support up to a 69-channel cable system. Thus, it appears that there are immediately available sufficient microwave frequencies to support a fully-loaded 450 MHz, 60-channel, cable system. When system activation to 550 MHz, or 77 channels, is triggered, between 61 and 77 microwave channels would be required. Present FCC Rules for CARS microwave stations allow up to 71 six-MHz channels. It is conceivable that up to 80 channels would be possible with an FCC waiver, although we consider it unlikely that a waiver for the top nine channels of the E-Group CARS frequencies could be obtained.

We thus conclude that the SCT proposal to utilize all AML microwave for downstream distribution has a theoretical capacity to support a 77 channel cable system. Whether or not at least 61 microwave channels could be licensed at some future date, when the full 550 MHz capacity is needed, would depend on the state of the microwave spectrum at that future date.

Possible interference from mobile users. The 13 GHz CARS band is shared with the Television Auxiliary Broadcast Service. Because this service includes mobile users, it is possible that occasional interference may be received. We do not consider this to be a significant threat, and FCC Rule Section 74.602(f) requires TV pick-up stations using the 13 GHz band to protect community antenna relay stations.

#### Hub Return Interconnect Capacity

SCT has indicated to us that the alternative system design will utilize 30 MHz supertrunk returns from each hub (including Galt). While this represents much less return interconnect capacity than originally proposed, it is our judgment that this will still provide sufficient capacity to support the foreseeable return interconnect needs for the subscriber network.

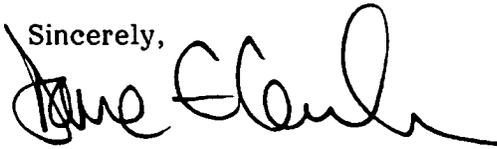
Amplifier Pedestals. Conversion to a single-cable design would allow use of smaller amplifier pedestals and enclosures, but could require up to 17 percent more such pedestals, depending upon the ultimate amplifier configuration adopted. An equipment substitution request would be required for the smaller pedestals.

Equipment Substitution Requests

The SCT alternative system design request will require equivalency findings for all active electronics, set-top converters, and taps and directional couplers. Based upon the preliminary data for the 450 MHz and 550 MHz Magnavox and Scientific Atlanta electronics supplied to us, we do not anticipate difficulty in reaching an equivalency finding for these items.

In regard to the SCT proposal to substitute 60% braid drop cable for the quad shield drop cable originally bid, SCT has informally indicated to us that the reference to a simple 60% braid drop cable in its February 20 alternative system design request was in error. The reference should have been to a 67% braid-plus-foil drop cable. Provided SCT agrees to utilize only messengered cable for aerial drops, we believe a finding of equivalency could be made. Upon receipt of a specific drop cable equivalency request, we will make a detailed evaluation.

Sincerely,



Dane E. Ericksen

ac

# SACRAMENTO METROPOLITAN



Cable  
CTC Television  
Commission

SUITE 2500, 700 'H' ST., SACRAMENTO, CA 95814 • (916) 440-6661

ROBERT E. SMITH  
EXECUTIVE DIRECTOR

February 6, 1985

To: Sacramento Metropolitan Cable Television Commission  
From: Bob Smith, Executive Director  
Subject: COMMISSION COUNSEL

The resignation of Commission Counsel Dave McMurtry comes at a difficult time for the Commission in view of the pending negotiations with Sacramento Cable Television and the possibility of having to enforce Franchise provisions.

Therefore, it is recommended that the Commission expand the existing Special Counsel responsibilities of Brenton Bleier to Commission General Counsel by approving the attached agreement. This agreement contains no changes from the conditions present in the McMurtry contract.

A handwritten signature in cursive script that reads "Bob Smith".

BOB SMITH, Executive Director  
Sacramento Metropolitan Cable  
Television Commission

RES:ab

Attachment

85-089

AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT is made and entered into this \_\_\_\_ day of February, 1985 by and between the SACRAMENTO METROPOLITAN CABLE TELEVISION COMMISSION, a joint powers agency, (hereinafter "the COMMISSION") and LAW OFFICES OF BRENTON A. BLEIER, A Professional Corporation, (hereinafter "the FIRM").

WITNESSETH:

WHEREAS, the COMMISSION desires to retain the FIRM to provide legal services to the COMMISSION as General Counsel; and

WHEREAS, the FIRM desires to accept representation of the COMMISSION;

NOW THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS, AND OTHER TERMS AND CONDITIONS CONTAINED HEREIN, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

1. The COMMISSION hereby retains the FIRM as General Counsel to the COMMISSION to provide the services described in Paragraph 2 below and the FIRM agrees to perform said services in accordance with the terms hereof.

2. The services to be performed by the FIRM shall consist of the provision of legal advice, attendance at Commission meetings or other public meetings, the drafting and/or review of contracts, opinions, agreements, regulations and resolutions and services related to representation of the COMMISSION in any necessary administrative or judicial proceedings and such other or related duties as shall from time to time be assigned to the FIRM by the Executive Director of the COMMISSION. The nature and extent of the services to be performed shall at all times be subject to the direction of the Executive Director of the COMMISSION.

3. During the term of this agreement, the COMMISSION shall compensate the FIRM on the basis of actual time expended by the attorneys of the FIRM. As to services rendered by BRENTON A. BLEIER, an employee of the FIRM, the FIRM shall be compensated at the rate of ONE HUNDRED DOLLARS (\$100.00) per hour for legal services directly related to representation of the COMMISSION in any necessary administrative or judicial proceeding and at the rate of EIGHTY DOLLARS (\$80.00) per hour for all other services including without limitation the

## Agreement for Legal Services

provision of legal advice, attendance at Commission meetings or other public meetings, the drafting and/or review of contracts, opinions, agreements, regulations and resolutions and such other or related duties as shall from time to time be assigned to the FIRM by the Executive Director of the COMMISSION. Services of other employees or members of the FIRM shall be compensated at a rate to be agreed upon by mutual agreement of the FIRM and the Executive Director of the COMMISSION.

4. In addition to the above fees for services rendered, the COMMISSION agrees to reimburse the FIRM all costs and expenses incurred by the FIRM in representation of the COMMISSION, including without limitation the following:

(a) Filing fees, process serving fees, court costs and related costs;

(b) Witness fees, expert witness fees, court reporters' fees and fees for transcribing depositions or other statements;

(c) Investigation fees, charges for photocopying, long distance telephone charges, charges for development and reproduction of photographs, and charges for copies of any and all kinds of records; and

(d) Travel expenses, including mileage, meals, lodging and related expenses.

5. The compensation owing under this agreement shall be payable on a calendar month basis, pursuant to written statements of charges itemizing the hours of services rendered and the costs incurred by the FIRM in representation of the COMMISSION. Such statements shall be submitted by the FIRM within fifteen (15) days after the close of each month and shall be paid by the COMMISSION within thirty (30) days after receipt.

6. This Agreement shall expire on September 30, 1985.

7. In the performance of all services rendered under this agreement, and for all purposes, the employees of the FIRM shall be considered those of an independent contractor and not agents or employees of the COMMISSION.

8. The FIRM shall not assign either the obligations or the benefits under this agreement.

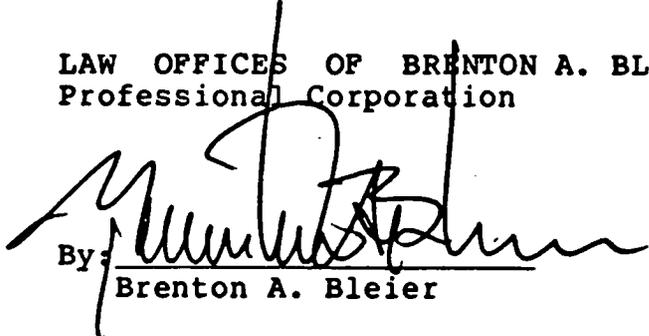
Agreement for Legal Services

9. This agreement may be terminated at any time by either party upon thirty (30) days prior notice in writing.

SACRAMENTO METROPOLITAN CABLE  
TELEVISION COMMISSION, a joint powers  
agency

By: \_\_\_\_\_  
Chairman

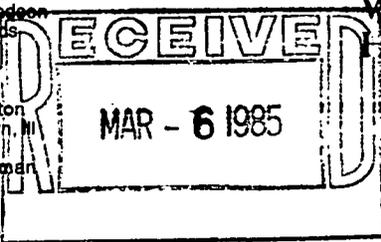
LAW OFFICES OF BRENTON A. BLEIER, A  
Professional Corporation

  
By: \_\_\_\_\_  
Brenton A. Bleier

Quincy Brown, Jr.  
Wood R. Erich  
Cavan Hardy  
William A. Wilson  
Leo H. Schuering, Jr.  
Anthony D. Osmundson  
Thomas C. Richards  
David L. Perrault  
L. Thomas Wagner  
Roger T. Stewart  
David S. Worthington  
John Quincy Brown, III  
Lucinda C. Pogan  
Robert H. Zimmerman  
Steven T. Scully  
Russ J. Wunderli  
Richard M. Cunha  
Robert B. Zaro  
Denise J. Fischer  
Nelson K. Brooks  
Pamela E. Cogan  
Michael Flaherty  
Robert Dale Ginter  
Mary L. B. Robertson  
Christopher Chediak  
Bruce Kaminski

LAW OFFICES

WEINTRAUB GENSHLEA  
HARDY ERICH & BROWN  
A Professional Corporation



March 6, 1985

Curtis Cutter Sproul  
Joseph S. Genshlea  
Malcolm S. Weintraub  
Geoffrey Burroughs  
Frank P. Plavan  
L. Burda Gilbert  
Dee Hartzog  
Trena H. Burger  
Joseph Ehrlich  
Mark A. Jones  
Michael H. Kvarme  
Gilles S. Attia  
Larry L. Hill  
Victoria Pynchon  
Timothy J. Nisson  
Robert D. Rochelle  
Geoffrey R. Way  
Michael E. Zacharia  
Nancy B. McGann  
Ann E. Sarli  
Alexander O. Lichtner

*Of Counsel*  
Lois Gilbert Sherman  
Leo H. Schuering, Inc.  
Anthony R. Giannoni

Robert Smith  
Executive Director  
SACRAMENTO METROPOLITAN CABLE  
TELEVISION COMMISSION  
700 H Street  
Suite 2500  
Sacramento, CA 95814

HAND DELIVERED

Re: Cablevision of Sacramento

Dear Mr. Smith:

I am writing to communicate Cablevision's reaction to the modifications proposed by Sacramento Cable Television Company. We understand that the proposed changes may save SCT as much as 30 million dollars and further understand that the proposed changes will reduce the quality and quantity of cable services available to the people of Sacramento.

Cablevision is asking the Commission to respect its rights in this matter. Cablevision unsuccessfully attempted to raise its equity contribution based upon the requirements of the Proposal and the Resolution offering the franchise to Cablevision of Sacramento. The modifications being sought appear to materially alter the financial requirements of the franchise. Under these circumstances, equity requires that Cablevision be afforded the opportunity to again participate in the Sacramento cable system.

As you know, we earlier warned the Commission that we expected Scripps-Howard to request substantial modifications to the franchise. Now that the request has been made, we expect that the Commission will not ignore our rights in this matter.

WEINTRAUB GENSHLEA  
HARDY ERICH & BROWN  
A Professional Corporation

Robert Smith  
Page 2  
March 6, 1985

Cablevision remains available to discuss these matters in more detail at your convenience.

Very truly yours,

WEINTRAUB GENSHLEA  
HARDY ERICH & BROWN  
A Professional Corporation

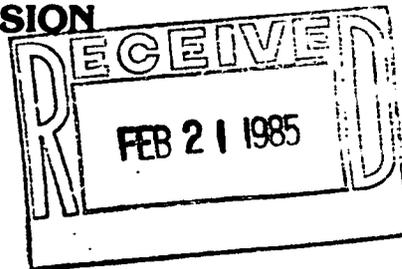
By *L. Kent Wyatt*  
L. Kent Wyatt

LKW/sw

cc Donald Perris

## SACRAMENTO CABLE TELEVISION

4350 Pell Drive  
Sacramento, CA 95838  
(916) 927-2225



February 20, 1985

Bob Smith, Executive Director  
Sacramento Metropolitan Cable Commission  
700 "H" Street, Suite 2500  
Sacramento, CA 95814

Dear Bob:

We are pleased with the progress which Scripps-Howard and the Commission have been able to achieve in bringing cable television to the residents of Sacramento City and County, Folsom and Galt. The recent signing of the trust grants is another indication of Scripps-Howard's commitment to the community and a major step in making cable a reality.

As you know, we have been conducting a comprehensive study of the design and operation of the Sacramento cable system. As a result of this study, we are proposing certain technical changes for evaluation and approval, as well as some clarifications in the franchise documents. With these in place, we have arranged our financing and are ready to begin construction in mid March.

1. Field-proven improvements in the bandwidth carrying capacity of coaxial cable have made it possible to carry as many as 62 video channels on a single 450 megahertz cable. A new technology is now planned for production that will expand the capacity to 77 channels at 550 megahertz. The system would be so designed and spaced that it would be capable of conversion to 550 megahertz when the need exists and 550 technology is proven reliable. These configurations will more than adequately support all services proposed in the franchise, as well as those that may be available in the foreseeable future.
2. This technical modification will make possible an alternate distribution technology. Originally, four essentially separate headends were proposed to serve the imposed area sequentially. The new method will place a single master headend in the downtown area, and distribute service via AML to a series of 7 hubs located throughout the service area. This modification will allow more areas to be served more quickly than we had proposed. For example, the City of Galt could receive service during the second year of construction.
3. The changes proposed above will enable us to reserve space on the single subscriber cable to provide

12-16 megahertz of space for institutional use throughout the entire 3,000 mile system, effectively multiplying the reach of the I-Net by a factor of 4. In addition, we would propose building a separate I-Net of up to 200 miles as need and commercial practicability dictate.

4. These changes in the design and construction sequence of the system will necessitate changes in the Census Tract Progression Tables and in the schedules for access training and the opening of access and local origination facilities. The entire system would, of course, still be completed well within a four year construction period.
5. The drop cable to be used in the system from the tap to the subscriber's home should be changed from quad shield cable to 60% braid cable. Our studies have shown that 60% braid cable is less costly, but will be equally as effective as quad shield in preventing ingress or egress in an environment like Sacramento's.

In addition to these technical changes, there are a few areas in the franchise where we would ask for clarification and confirmation:

1. The franchise calls for 24% of basic revenues to be spent on fees for the importation of distant signals. It is our understanding that this 24% applies to the \$2.00 rate, which equates to \$0.48 per subscriber per month throughout the franchise term.
2. The franchise gives us the right to use public easements. In underground construction areas, these easements generally run through the parkways. At the same time, the permitting authority requires us to build in the streets, a far more expensive method of placing underground cable and one not in normal use anywhere else in the country. We request the Commission to help us remove whatever impediments there are that prevent us from building in the parkways in areas where minimum disruption would be involved.
3. We have been photographing private parcels of property prior to construction. With the inspection and restoration standards we are working under, we see no need to continue this practice.
4. Our application called for a locally produced news program to be tested in the fifth year of the franchise, and to be

Page Three  
Bob Smith  
February 20, 1985

continued only if commercially practicable. The test should be done in terms of an evaluation of need and potential commercial success in advance of the startup of the program.

5. As provided for in the Ordinance, the Commission needs to subordinate its claim on the assets of the system to those of our lenders.

We are convinced that the requested technical changes and franchise clarifications are reasonable, technically and economically justifiable, and most importantly, will deliver the same high quality and quantity of services promised in the franchise. We look forward to your prompt evaluation and Commission approval so we can commence construction immediately.

Sincerely,



Richard J. Davis  
General Manager

RJD:pg

RECEIVED  
CITY CLERK'S OFFICE  
CITY OF SACRAMENTO

FEB 28 4 52 PM '85

SACRAMENTO METROPOLITAN CABLE TELEVISION COMMISSION

IN JOINT MEETING WITH

THE CITY COUNCIL

AND

BOARD OF SUPERVISORS

BOARD OF SUPERVISORS' CHAMBERS

700 "H" STREET

SACRAMENTO, CALIFORNIA 95814

THURSDAY, MARCH 7, 1985

2:30 P.M.

## SACRAMENTO METROPOLITAN



Cable  
 Television  
 Commission

SUITE 2500, 700 'H' ST., SACRAMENTO, CA 95814 • (916) 440-6661

ROBERT E. SMITH  
 EXECUTIVE DIRECTOR

February 28, 1985

To: Board of Supervisors  
 City Council  
 Sacramento Metropolitan Cable Television Commission

From: Bob Smith, Executive Director  
 Sacramento Metropolitan Cable Television Commission

Subject: SUMMARY OF STAFF RECOMMENDATIONS - TECHNICAL MODIFICATIONS AND CLARIFICATIONS

The attached staff report outlines the request by the cable company for technical modifications and clarifications and details the staff recommendations. These staff recommendations are summarized below:

1. Change the dual cable 350 MHz system to a single 550 MHz system, initially activated at 450 MHz.
2. Permit the use of AM microwave in a seven hub configuration rather than supertrunk FM microwave and four headends.
3. Allocate up to 20 MHz of spectrum space for Institutional Network usage on the 3,000 Subscriber Network. When this capacity is 90% utilized, a separate I-Net of up to 200 miles is required.
4. Allow the cable company to begin building the system simultaneously throughout Sacramento County rather than the confined geographical areas originally bid.
5. Open a public access studio and begin basic training in February 1986.
6. Request the Commission to recommend that the various Departments of Public Works review cable construction in front yards rather than at the lip-of-the-gutter.
7. Utilize a major accounting firm to determine the commercial viability of the 24-hour local news service prior to its initiation, rather than beginning the service and then commencing a test period.
8. Eliminate the requirement for preconstruction photography.
9. Clarify the original formula used to calculate the amount of copyright fees for distant signals.

Details on these recommendations are included in the staff report.

A handwritten signature in black ink, appearing to read "Bob Smith".

BOB SMITH, Executive Director  
 Sacramento Metropolitan Cable  
 Television Commission

Attachment  
 85-138

# SACRAMENTO METROPOLITAN



**Cable Television Commission**

SUITE 2500, 700 'H' ST., SACRAMENTO, CA 95814 • (916) 440-6661

ROBERT E. SMITH  
EXECUTIVE DIRECTOR

February 26, 1985

MEETING IN JOINT SESSION:  
March 7, 1985, 2:30 p.m.

To: Board of Supervisors  
City Council  
Sacramento Metropolitan Cable Television Commission

From: Bob Smith, Executive Director  
Sacramento Metropolitan Cable Television Commission

Subject: ADOPTION OF RESOLUTION FOR TECHNICAL MODIFICATIONS AND CLARIFICATIONS

The attached letter from Sacramento Cable Television requests technical modifications to the cable system design and certain other clarifications of the Franchise Documents as follows:

1. Change the dual cable 350 MHz system to a 550 MHz single cable design initially utilizing 450 MHz hardware spaced to 550 MHz and ultimately retrofitted to the higher 550 MHz capacity upon certain conditions.
2. Make corresponding changes in the microwave distribution system to use AM microwave in a seven hub configuration rather than supertrunk, FM microwave, and four headends (also includes a substitution request for use of 60% braided shield drop cable which staff recommends processing later under the equipment substitution procedure).
3. Allocate up to 20 MHz of spectrum space for I-Net usage until 90% of capacity is obtained, at which time up to a 200 mile I-Net is required.
4. Allow adjustment of the mileage construction timetable to begin building the system throughout the Imposed Service Area rather than the confined geographical areas originally bid. Open a public access studio and begin basic training in Month 26 due to delay in construction start-up.
5. Secure a recommendation from the Commission to the various Departments of Public Works regarding underground construction in front yards rather than at the lip-of-the-gutter.
6. Utilize a major accounting firm to determine the commercial viability of the 24-hour news service prior to its initiation, rather than beginning the service and then commence a test period.
7. Eliminate the requirement for preconstruction photography.
8. Restate the original formula to specify the maximum dollar amount of revenues from Tier I rates to be used in paying copyright fees for distant signals.

Fiscal Appropriateness.

Sacramento Cable Television states their estimated \$100 million loan is in place, and are prepared to initiate construction by March 15th. However, by the attached letter, they indicate that it is necessary to reduce expenditures by approximately \$20 to \$30 million to make the Sacramento system a viable business enterprise.

Actual experience in urban markets has caused the company to change their original revenue/subscriber and pay to basic assumptions. Further, competition from VCR sales, MDS systems and video recordings are threatening the financial health of the Sacramento system by, among other factors, depressing the original penetration assumptions. Granting the technical changes requested, according to Sacramento Cable Television, will mitigate these adverse economic factors. In addition, with the design change, construction will occur simultaneously from multiple hubsites located throughout the Imposed Service Area rather than the limited geographical areas originally indicated.

In order to determine the necessity of granting such modifications, the Commission staff asked Touche Ross to review the reasonableness of these assumptions and the appropriateness of approving their request.

According to Touche Ross, whose final report will be distributed Tuesday, Sacramento Cable's request for changes in system design are reasonable.

- The company has lowered its penetration and revenue-per-subscriber projections. Based on Touche Ross' analysis of current urban markets' experience since the submission of the original proposal, the lower projections appear justified and reasonable.
- Given these new projections, the requested change in design will allow Sacramento Cable to maintain financial health and stability.
- The proposed changes in system design are sound economically, because they provide significant capital savings for the operator, without cut-backs in the range of programming and services available to subscribers.

Technical Appropriateness.

The technical modifications were submitted to Hammett & Edison, the Commission's Engineer, who determined whether or not the proposed system was as reliable, had sufficient capacity, and was as technically sound as the dual cable configuration originally bid. It is not possible to make a component by component comparison of the proposed 450/550 MHz system versus the dual cable 350 MHz system since they are entirely different designs and configurations. However, it is possible to review whether or not the proposed alternative system design is equivalent based upon the following overall factors:

1. Provides in every respect the same degree of reliability as the original proposed system.
2. Has the capacity to carry both the program services originally bid as well as sufficient capacity to carry all services that might be brought on line in the foreseeable future.
3. Is technically equal to or superior in signal quality at point of delivery as that originally bid.

The conclusions of Hammett & Edison, whose final report will also be distributed Tuesday, are as follows:

1. Reliability.

Subject to Sacramento Cable Television agreeing to the stipulations in the Hammett & Edison report on the Alternative System Design request of February 20th, and based on manufacturers' representation, Hammett & Edison concludes that the AM microwave system now proposed will provide reliability comparable to the combined FM and AM microwave system originally proposed.

2. System Capacity.

Subject to a successful frequency coordination study and ultimate licensing by the FCC, which Hammett & Edison believes to be likely, the capacity of the proposed system will be adequate for delivery of presently proposed and what they believe to be reasonably foreseeable future programming and other services.

3. Quality and Performance Characteristics.

Subject to Sacramento Cable Television agreeing to the stipulations in the Hammett & Edison report on the Alternative System Design and based on manufacturers' representation, Hammett & Edison concludes that the quality and performance characteristics of the 550 MHz single cable system will be equal to or better than the characteristics of the dual cable 400 MHz system originally proposed.

From staff's viewpoint, the new system provides the same overall reliability, capacity, and meets our technical standards and, therefore, it is recommended that you approve the design change. However, such approval should be conditioned upon the stipulations as outlined in the Hammett & Edison report.

Recommended Technical Modifications.

According to the Commission's Engineer, the equipment for the 550 MHz system is still unavailable as a standard production model, but will be very soon. Therefore, to ensure cable is delivered to the Sacramento subscriber as soon as possible, staff is recommending that the cable company be permitted to:

--- Initially construct the system utilizing 450 MHz hardware spaced at a .550 MHz design.

--- Mandated to upgrade to a 550 MHz system when it is:

Determined to be appropriate, in the sole discretion of the Commission, unless the company can demonstrate that it is:

(a) Unreliable;

(b) Unavailable in production quantities;

(c) Upgrade equipment is in incompatible with existing amplifier housings; or

(d) Alternative technology is available which provides the capacity of 550 MHz.

With respect to the I-Net, staff finds that the 3,000 mile reserved spectrum space (up to 20 MHz) on the 450 MHz subscriber system is acceptable for I-Net usage as long as:

--- Up to a 200 mile separate I-Net loop is constructed when over a 30-day period, 90% of the existing 20 MHz capacity on the Subscriber Network is utilized; or

--- When an available user contract cannot be accommodated with this I-Net allocation on the Subscriber Network; and

--- The five video I-Net channels obligated to the Educational Consortium are, at all times, made available.

Clarifications.

1. Front Yard/Parkway Construction.

The company has asked that it be allowed to reduce construction costs by building a portion of the 1,000 miles of underground cable installation in front yards or parkways outside the street area. This issue has been discussed with Public Works on numerous occasions. However, the cable company is now managed by new personnel who earnestly believe that this issue should be evaluated again.

In addition, the company believes it is possible to pre-approve certain areas for front yard construction. It is conceivable that Public Works may agree that some areas can be so pre-approved.

Staff suggests that the Commission recommend that Public Works meet with the cable franchisee to discuss whether certain underground construction areas can be approved for front yard construction. It should be noted that the Public Works Departments are not bound to grant the cable company's request.

2. Preconstruction Photography.

Preconstruction photography was raised by the company as being unduly burdensome. This provision requires that the cable company video tape or record photographically in some way every street prior to construction. Such evidence is utilized in the Hearing Officer complaint process to prove whether or not the homeowner has suffered damages as a result of cable construction. We have no objection to leaving this requirement optional as long as the burden of proof during the hearing process or subsequent lawsuits is shifted entirely to the franchisee. Therefore, staff would recommend such a change.

3. 24-Hour News Service.

Under the existing agreement, three and a half years from now or when there are 100,000 subscribers, the cable company must provide a 24-hour local news channel unless, after placing it on the system for one year, it is proven to be commercially unsuccessful. Because of the startup cost, the company wishes to be permitted to test the marketplace and have such a determination made prior to hiring personnel and initiation of the 24-hour local news channel. As you will recall, staff's analysis of the original bid expressed concern that because of the amount of news available in the Sacramento market this news service was marginal and consented to such a test of its removal. We have no objections to undertaking the test earlier as long as it is done by one of the Big Eight accounting firms. Further, it is recommended that the resolution provision regulating the associated staffing requirements be deleted. It is my view that if the test shows the local news service is not commercially viable, we ought to have the option of reviewing this matter every three years thereafter throughout the 20-year term.

Should you agree to approve these modifications, I have been assured that construction will commence in approximately seven to ten days and that it will occur throughout the Imposed Service Area. We are very pleased with the progress made by E. W. Scripps, Scripps-Howard Broadcasting and Sacramento Cable Television to date and particularly want to express our appreciation to Mike Callaghan, Gil Champagne and Dick Davis for the many hours of work that were necessary to reach agreement on all these issues.

It is, therefore, my recommendation that:

- (1) The Board of Supervisors and the City Council adopt the attached resolution reflecting approval of all technical changes and clarification of the Franchise Documents reported in this document.

Board of Supervisors/City Council/Cable Commission  
March 7, 1985  
Page 6

- (2) Once approved by the two legislative bodies that the Commission adopt a similar resolution with the additional provision of recommending that the respective Public Works Departments meet with the cable franchisee to discuss front yard, underground construction.
- (3) Each of the legislative bodies recommend to the City Councils of Folsom and Galt that they not object during the next 30 days to the adoption of the Commission's amended resolution.

  
\_\_\_\_\_  
BOB SMITH, Executive Director  
Sacramento Metropolitan Cable  
Television Commission

RES:ab

Attachment

85-128

PRELIMINARY DRAFT  
FOR DISCUSSION PURPOSES ONLY

RESOLUTION NO. 85-006

A RESOLUTION OF THE SACRAMENTO METROPOLITAN CABLE TELEVISION COMMISSION APPROVING AN ALTERNATE SYSTEM DESIGN FOR SACRAMENTO METROPOLITAN CABLE TELEVISION SYSTEM SUBJECT TO CERTAIN CONDITIONS AND MAKING CERTAIN CHANGES IN THE CABLE FRANCHISE RESOLUTION.

WHEREAS, the Board of Supervisors of the COUNTY OF SACRAMENTO ("the COUNTY") and the City Council of the CITY OF SACRAMENTO ("the CITY") did adopt resolutions authorizing the COMMISSION to offer a cable television franchise; and

WHEREAS, this COMMISSION adopted its Resolution No. 83-023 on November 22, 1983 ("the Franchise Resolution") offering a cable television franchise to CABLEVISION OF SACRAMENTO; and

WHEREAS, said franchise was accepted; and

WHEREAS, the COMMISSION has from time to time amended certain provisions of the aforesaid Resolutions including approving a transfer of control of the franchisee and a change of name to SACRAMENTO CABLE TELEVISION ("the FRANCHISEE"); and

WHEREAS, pursuant to the provisions of Section II A 2., Alternative System Design, as amended, the FRANCHISEE has submitted a proposed revision of the design of the system, a copy of which is attached hereto and incorporated herein by reference as Exhibit "A"; and

WHEREAS, the COMMISSION has retained an engineer to study, evaluate and analyze the proposed revision of the design; and

WHEREAS, the engineer has reported to the COMMISSION on the matter of the proposed revision's equality to or superiority to the original design contained in the Application, a copy of which is attached hereto and incorporated herein by reference as Exhibit "B"; and

WHEREAS, the COMMISSION finds it appropriate to amend certain provisions of the Franchise Resolution in order to clarify the rights, duties, and obligations of the COMMISSION, the COUNTY, the CITIES, and the FRANCHISEE; and

WHEREAS, the COMMISSION has conducted a properly noticed public hearing to receive additional evidence concerning the proposed amendments to the Franchise Resolution and revision of the design; and

WHEREAS, the COMMISSION has duly considered the proposed

Resolution No. 85-006

revision of the design, together with the report, evaluation and analysis of the COMMISSION's engineer and such other and additional evidence as has come before it in the noticed public hearing; and

WHEREAS, this COMMISSION desires to adopt certain amendments to the Franchise RESOLUTION and to approve the proposed revision of the design upon the terms and subject to the conditions hereinafter set forth;

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO METROPOLITAN CABLE TELEVISION COMMISSION THAT:

1. Subparagraph b (1) of Section II A 2 is hereby amended and restated as follows:

"(1) A certification by the Chief Executive Officer of the Franchisee stating in clear and unequivocal terms that, to the best of his knowledge and belief, the proposed revision of the design is in all aspects, including but not limited to quality, anticipated useful life and performance characteristics, equal to or superior to the design set forth in the Application in that:

a. the quality and performance characteristics of each aspect of the signal under the proposed system design, as delivered to the ultimate user, will be of at least the same quality and performance characteristics (including without limitation consideration of its strength, definition, integrity and discreteness) as the corresponding aspect of the signal which would have been so delivered under the design specified in the Application; and

b. the reliability of each aspect of the signal under the proposed system design, as delivered to the ultimate user, will be of at least the same degree of reliability (including without limitation consideration of the influence of atmospheric, topographic and competitive signal factors which may reasonably be anticipated to be found within the franchise area or any portion of it during the franchise term; and

c. the capacity of the system will be such as to be capable of delivery of such volumes of programming and other services to the community, as to both

Resolution No. 85-006

existing and reasonably foreseeable future programming and services, as the COUNTY and the CITY acting jointly have determined is necessary, appropriate and in the best interests of the Sacramento community; and"

2. This COMMISSION finds and determines, based upon all of the evidence presented and available to it, that the FRANCHISEE has shown by clear and convincing evidence that the proposed revision of the design, in its ultimate configuration, is in all aspects, including but not limited to quality, anticipated useful life and performance characteristics, equal to or superior to the original design contained in the Application in that:

a. the quality and performance characteristics of each aspect of the signal under the proposed system design, as delivered to the ultimate user, will be of at least the same quality and performance characteristics (including without limitation consideration of its strength, definition, integrity and discreteness) as the corresponding aspect of the signal which would have been so delivered under the design specified in the Application; and

b. the reliability of each aspect of the signal under the proposed system design, as delivered to the ultimate user, will be of at least the same degree of reliability (including without limitation consideration of the influence of atmospheric, topographic and competitive signal factors which may reasonably be anticipated to be found within the franchise area or any portion of it during the franchise term; and

c. the capacity of the system will be such as to be capable of delivery of such volumes of programming and other services to the community, as to both existing and reasonably foreseeable future programming and services, as this COMMISSION has determined is necessary, appropriate and in the best interests of the Sacramento community.

3. This COMMISSION hereby approves the FRANCHISEE's proposed revision of the design of the system as set forth in the attached Exhibit "A", and hereby incorporates such revision into the Franchise Resolution and, to the extent that it is expressly inconsistent with the design of the system as set forth in the Application, the provisions of Exhibit "A" hereto

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shall prevail over the terms of the Application and the Franchise Resolution, PROVIDED THAT the foregoing approval shall in no way operate to relieve the FRANCHISEE to any degree whatsoever of its obligation to meet and comply strictly with each and every technical test, review and specification as set forth in the Franchise Resolution including without limitation signal testing, Federal Communications Commission standards, technical standards and equipment substitution procedures, unless such technical test, review or specification is expressly altered, amended or deleted herein.

4. This COMMISSION hereby expressly finds and determines that it would not have approved the temporary use of a four hundred fifty (450) megahertz system as set forth in Exhibit "A" but for the assurance of the FRANCHISEE of the installation of a five hundred fifty (550) megahertz system as soon as it is, in the judgement of this COMMISSION and as hereinafter provided, reliable in accordance with the terms hereof. Accordingly, by the filing of a Certificate of Acknowledgement and Undertaking hereto as required by Paragraph 18d. of this Resolution below, the FRANCHISEE, the named owners thereof and SCRIPPS HOWARD BROADCASTING COMPANY do hereby agree that the terms hereof shall be liberally construed to accomplish the purposes hereof and to require the installation of the five hundred fifty (550) megahertz system described in Exhibit "A" hereto, or such other system design as may be from time to time approved by this COMMISSION pursuant to Sections II A 2 and VI E 24 of the Franchise Resolution.

5. Section VI A 1 of the Franchise Resolution is hereby amended to read as follows:

- "1. Subscriber Network. The Subscriber Network shall:
  - a. Consist of one cable with a frequency spectrum of 5-550 megahertz with:
    - (1) at least four (4) six (6) megahertz channels upstream within a frequency spectrum of 5-30 megahertz; and
    - (2) at least seventy seven (77) six (6) megahertz video channels downstream within a frequency spectrum of 50-550 megahertz, provided that pursuant to the provisions of Paragraph 19 of this Section VI below, the FRANCHISEE may initially activate the system to

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four hundred fifty (450) megahertz.

6. The second paragraph of Section VI B 3 of the Franchise Resolution is hereby amended to read as follows:

"The FRANCHISEE shall utilize the Subscriber Network Cable to provide Home Entertainment; Educational; and Home Non-Entertainment Services in four tiers or packages as follows:

7. Section VI of the Franchise Resolution is hereby amended by adding a new Section E thereto after the existing Section D as follows:

"E. TEMPORARY ACTIVATION OF SYSTEM AND CONDITIONS UPON ULTIMATE ACTIVATION

19. The Upgrade Order. The FRANCHISEE shall be permitted initially to activate the system only to four hundred fifty (450) megahertz, providing thereby not less than sixty-two (62) video channels. The COMMISSION may meet from time to time to consider the need for additional spectrum capacity beyond the capability of the system at four hundred fifty (450) megahertz. The COMMISSION shall give the FRANCHISEE written notice of the time, date, place, and purpose of any such meeting in accordance with Section 5.50.024 of the Ordinance. The FRANCHISEE shall be permitted at such meeting to address all matters which are the subject of such notice. If the COMMISSION determines, in accordance with the foregoing provisions and in its sole discretion, that there is a need for additional spectrum capacity, the COMMISSION shall issue and mail to the FRANCHISEE the upgrade order as hereinafter defined. It is the intention of this COMMISSION, the BOARD, the COUNCIL, the FRANCHISEE, and the named owners thereof to upgrade the system to its ultimate activation level of five hundred fifty (550) megahertz at the earliest possible date, but in no event more three hundred sixty five (365) days after the issuance by the COMMISSION of an order (the "upgrade order") to the FRANCHISEE to upgrade the system to its ultimate activation level of five hundred fifty (550) megahertz, subject to the right of the FRANCHISEE to establish

non-reliability pursuant to Paragraph 21 below.

20. Franchisee's Establishment of Non-reliability. The COMMISSION may at any time during the term of the franchise and in its sole discretion, but not more than once within any twelve (12) consecutive months during such term, after notice to the FRANCHISEE pursuant to Section 5.50.024 of the Ordinance, issue an upgrade order to the FRANCHISEE causing the upgrade of the system to its ultimate activation level of five hundred fifty (550) megahertz, subject ONLY to the right of the FRANCHISEE to establish non-reliability pursuant to Paragraph 21 below.

21. Non-Reliability Defined. Upon the issuance of an upgrade order by the COMMISSION pursuant to Paragraphs 19 and 20 above, the FRANCHISEE may forestall the application of its obligation to upgrade the level of activation of the system to five hundred fifty (550) megahertz ONLY by establishing, within sixty (60) days of the issuance of such an order, by clear and convincing evidence that one or more of the following conditions have been met and continue to exist:

a. The mean time to failure for a five hundred fifty (550) megahertz amplifier manufactured by the manufacturer of the FRANCHISEE's four hundred fifty (450) megahertz amplifiers (the "FRANCHISEE's manufacturer") is LESS than the mean time to failure for any four hundred fifty (450) megahertz amplifier theretofore installed by the FRANCHISEE in the system. The "mean time to failure" for amplifiers of FRANCHISEE's manufacturer shall be determined only by reference to published statistics of FRANCHISEE's manufacturer available to the cable industry generally.

b. The average number of service calls related to system failure per plant mile in all five hundred fifty (550) megahertz systems throughout the country shall be EQUAL TO or LESS than the average number of service calls related to system failure per plant mile in all four hundred fifty (450) megahertz systems throughout the country, when the maximum

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statistical inaccuracy derived from the applicable sampling technique is assumed and excluded from consideration. The "average number of service calls related to system failure... throughout the country" shall be determined only by reference to published figures, generally accepted within the cable industry, and based upon generally accepted statistical sampling techniques.

c. The FRANCHISEE's manufacturer (i) has not installed MORE than three thousand (3,000) miles of five hundred fifty (550) megahertz system plant which has been operating for at least twenty-four (24) consecutive months, or (ii) has not installed at least one system with at least eight hundred (800) miles of five hundred fifty (550) megahertz system plant which has been operating for at least twenty-four (24) consecutive months.

d. The FRANCHISEE's manufacturer is unable to guarantee that the FRANCHISEE's manufacturer can deliver as a standard production item five hundred fifty (550) megahertz amplifiers which (provided that such data is available) meet the reliability standard set forth in subparagraph a. above, meaning that FRANCHISEE's manufacturer can deliver at least five thousand (5,000) such five hundred fifty (550) megahertz amplifiers per month for a period of at least twenty four (24) consecutive months.

e. The installation of five hundred fifty (550) megahertz amplifiers would require a complete replacement of the then existing amplifier housings.

22. Disputes Regarding Reliability. Upon receipt of notice from the FRANCHISEE that the FRANCHISEE asserts the non-reliability of a five hundred fifty (550) megahertz system, the COMMISSION shall establish a hearing for the purpose of receiving the FRANCHISEE's evidence of non-reliability referred to in Paragraph 21 above. Upon receipt of such evidence, if the COMMISSION finds and determines that the FRANCHISEE has established by clear and convincing evidence that a five hundred fifty (550)

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megahertz system is not reliable pursuant to the provisions of Paragraph 21 above, the upgrade order shall forthwith be null and void. If the COMMISSION finds and determines that the FRANCHISEE has NOT established by clear and convincing evidence that a five hundred fifty (550) megahertz system is not reliable pursuant to the provisions of Paragraph 21 above, the COMMISSION shall thereupon issue an order confirming its upgrade order and its finding of the lack of the FRANCHISEE's establishment of non-reliability (the "reliability order"). Thereupon, the FRANCHISEE shall have thirty (30) days to give written notice to the COMMISSION that the FRANCHISEE is submitting the matter of the COMMISSION's reliability order to arbitration pursuant to the provisions of Paragraph 23 below. If the FRANCHISEE fails to give such a notice in a timely fashion, the COMMISSION's reliability order shall become final and binding upon the FRANCHISEE.

23. Arbitration Proceedings . With respect to any arbitration proceeding conducted pursuant to the provisions of Paragraph 22 of this Section VI, the arbitration panel shall be selected, the hearing scheduled within the time prescribed, notice given, the hearing conducted, decision made and costs divided in the manner prescribed by Sections 5.50.830 through 5.50.840, inclusive, of the Ordinance. The questions which may be submitted to the arbitration panel and the jurisdiction of the arbitration panel shall be limited to the following:

a. The interpretation of the provisions of the Franchise Documents solely in relation to the decision required by b. below; and

b. Whether or not the FRANCHISEE established before the COMMISSION by clear and convincing evidence that a five hundred fifty (550) megahertz system is not reliable under one or more of the tests set forth in Paragraph 21 above.

The determination of the arbitration panel shall be final, binding and conclusive upon the parties, and shall not be subject to judicial review or vacation except on the grounds set forth in Section 1286.2 of the Code of Civil Procedure.

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24. Alternative Technology . Notwithstanding the provisions of this Section E of this Section VI, the FRANCHISEE may apply at any time under the provisions of Section II A 2 for a revision of the design of the system to accomplish the purposes hereof by means of alternative technology. Nothing in this Paragraph shall be construed to limit or diminish the discretion of the COUNTY and the CITY acting jointly under the aforementioned section in its consideration of such a proposed alternative system design."

8. Section II A 6 a. of the Franchise Resolution is hereby amended by deleting therefrom the first sentence thereof.

9. Section III of the Franchise Resolution is hereby amended by deleting therefrom Paragraph 8 thereof.

10. Section VI A 2 of the Franchise Resolution is hereby amended and restated in its entirety as follows:

"2. Institutional Usage of Subscriber Network and Institutional Network.

a. Institutional Usage of Subscriber Network. The FRANCHISEE shall utilize up to twenty (20) megahertz of the Subscriber Network for Institutional uses until such time as the Institutional Network is constructed pursuant to subparagraph b hereof.

b. Institutional Network. The FRANCHISEE shall, from time to time hereafter, as required below, immediately begin construction of an Institutional Network, consisting of one (1) institutional cable which shall cover approximately two hundred (200) miles within the Imposed Service Area and with at least forty-nine (49) six (6) megahertz video channels within a frequency spectrum of 30-400 megahertz, at such time as the institutional usage of the Subscriber Network results in either of the following conditions:

(1) For a period of at least thirty (30) days, at least ninety percent (90%) of the FRANCHISEE's data channels on the subscriber network which may be utilized for institutional purposes pursuant to subparagraph a above are

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utilized between the hours of 8:00 a.m. and 5:00 p.m. on business days Monday through Friday, or

(2) A bona fide contract for the utilization of institutional services at commercially reasonable rates has been offered to the FRANCHISEE and, if accepted, when added to the then existing institutional usage of the subscriber network, the total of such existing and additional institutional usage would exceed the twenty (20) megahertz band of the subscriber network which may be utilized for institutional purposes pursuant to subparagraph a above.

In the event of the occurrence of condition (1) or (2) above, the FRANCHISEE shall construct a segment of the Institutional Network as may be necessary to relieve conditions (1) and (2) above, as the case may be, but in no event less than forty (40) miles or such less distance as the COMMISSION may in its sole discretion approve. Notwithstanding the foregoing sentence, the FRANCHISEE shall construct a first segment of the institutional network capable of delivery of all of the then existing institutional usage of the Subscriber Network. After construction of the first segment of the Institutional Network, the FRANCHISEE shall not thereafter, without the further express permission of the COMMISSION, utilize any portion of the Subscriber Network for institutional usage.

The FRANCHISEE shall at times use all reasonable efforts in good faith to develop a demand for and market the capacity of an Institutional Network.

Nothing contained in this Paragraph 2 shall be deemed or construed to reduce or diminish to any extent whatsoever the obligations of the FRANCHISEE to make available certain spectrum space to the Sacramento County Corporation for Educational Telecommunications (SCCET), also known as the Educational Consortium, for institutional usages pursuant to the Application or any contract by and between the FRANCHISEE and SCCET which may now or hereafter exist."

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11. Section VI D 14 of the Franchise Resolution is hereby amended by adding the he following sentence to the end thereof:

"The foregoing obligation shall be subject, in all respects, to the provisions of Paragraph A 2 of this Section VI."

12. Section V A 10 a. of the Franchise Resolution is hereby amended by deleting therefrom the words "...twentieth (20th)..." and substituting therefor the words "...twenty-sixth (26th)...".

13. Subparagraph a of Section V B 17 of the Franchise Resolution is hereby amended by deleting therefrom the words "...commencement of the second year..." and substituting therefor the words "...twenty-sixth (26th) month...".

14. Paragraph 1 of Section III of the Franchise Resolution is hereby amended by adding a new subparagraph c. thereto after the existing subparagraph b. as follows:

"c. The FRANCHISEE shall, within sixty (60) days of the notification by the COMMISSION of the approval of an Alternative System Design pursuant to Section II A 2 of this Resolution, submit a revised Construction Activation Table and a revised Census Tract Progression Table which (i) take into account the effect of the alternative system design and (ii) provide for the completion of the system within the times set forth in Section 5.50.410 of the Ordinance. Thereafter, all references in this Resolution to the Construction Activation Table or the Census Tract Progression Table shall be deemed to have reference to the revised tables, as applicable, and the FRANCHISEE shall continue to be bound by the terms of this Section III as such terms then apply to such revised tables."

15. Subparagraph d. (1) of Section VI B 4 or the Franchise Resolution is hereby amended and restated in its entirety as follows:

"(1) During each year of the franchise, the Franchisee shall be expressly permitted to reduce the number of distant channels cablecast upon the system to the extent, and only to the extent, that, in the next preceding franchise year, the actual expenditures for copyright

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fees on distant signal channels shall not have averaged less than an amount equal to the lesser of: (1) 24.778% of the Basic Service Revenues of the system as determined herein, or (2) five dollars and ninety-five cents (\$5.95) for each person and/or entity who has been a subscriber to some or all of the home entertainment, educational and home non-entertainment services contained within the Basic tier as defined by Paragraph B 3 a of Section VI of this Resolution during the franchise year. To the extent that such expenditures in any year shall be less than the aforementioned amount, the amount of the difference shall be set aside in a copyright fee reserve. When the level of funds in such reserve added to the aforementioned amount shall be sufficient to pay the copyright fees for an additional distant signal channel, said channel shall be restored to the system until said copyright fee reserve shall be exhausted."

16. Paragraph 8 of Section IV of the Franchise Resolution is hereby amended by adding a new subparagraph h. thereto as follows:

"h. Notwithstanding the provisions of subparagraph b. above, the Franchisee may initiate a determination of the economic feasibility of The Sacramento Channel in advance of its activation, by filing with the Commission, not less than ninety (90) days in advance of the date upon which it reasonably anticipates having obtained one hundred thousand (100,000) subscribers and in any event on or before the date upon which it obtains eighty thousand (80,000) subscribers, an application for pre-activation economic feasibility determination. Thereupon, the Commission shall select and retain an expert which shall be one of the so-called "Big Eight" accounting firms, the cost of which shall be borne entirely by the Franchisee without consideration of any other amounts paid by Franchisee to the Commission under the Franchise Documents, for the purpose of estimating, by such means and techniques as said experts shall deem advisable, the "Revenues" reasonably anticipated to be derived and the "Costs" reasonably anticipated to be incurred (as those terms are defined in subparagraph b. above) during the first year of operation of the Sacramento Channel. The report of the aforesaid experts shall be submitted jointly to the Franchisee and to the Commission within sixty (60) days after submission of the application by the Franchisee. Upon submission of the report of the estimation of Revenues and Costs, the

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Franchisee may reduce, pursuant to subparagraph b. above, (i) the hours per day, and/or (ii) the days per week, and/or (iii) the number or types of personnel required by this paragraph to the extent required to prevent Costs from exceeding Revenues, provided that, if the aforesaid study should result in the complete elimination of the Sacramento Channel, the Commission shall be entitled to, but not required to, similarly retain such experts (at the expense of the Franchisee) at intervals of not less than every three (3) years thereafter for the balance of the franchise term for the purpose of determining whether a change in circumstances within the market would enable the introduction of the Sacramento Channel."

17. Paragraph 20 of Section IV of the Franchise Resolution is hereby amended by adding thereto a new subparagraph c. as follows:

"c. Notwithstanding the provisions of subparagraph b. above, the Franchisee may initiate a determination of the economic feasibility of The Sacramento Channel in advance of its activation, by filing with the Commission, not less than ninety (90) days in advance of the date upon which it reasonably anticipates having obtained one hundred thousand (100,000) subscribers and in any event on or before the date upon which it obtains eighty thousand (80,000) subscribers, an application for pre-activation economic feasibility determination. Thereupon, the Commission shall select and retain an expert which shall be one of the so-called "Big Eight" accounting firms, the cost of which shall be borne entirely by the Franchisee without consideration of any other amounts paid by Franchisee to the Commission under the Franchise Documents, for the purpose of estimating, by such means and techniques as said experts shall deem advisable, the "Revenues" reasonably anticipated to be derived and the "Costs" reasonably anticipated to be incurred (as those terms are defined in subparagraph b. above) during the first year of operation of the Sacramento Channel. The report of the aforesaid experts shall be submitted jointly to the Franchisee and to the Commission within sixty (60) days after submission of the application by the Franchisee. Upon submission of the report of the estimation of Revenues and Costs, the Franchisee may reduce, pursuant to subparagraph b. above, (i) the hours per day, and/or (ii) the days per week, and/or (iii) the number or types of personnel required by this paragraph to the extent required to prevent Costs

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from exceeding Revenues, provided that, if the aforesaid study should result in the complete elimination of the Sacramento Channel, the Commission shall be entitled to, but not required to, similarly retain such experts (at the expense of the Franchisee) at intervals of not less than every three (3) years thereafter for the balance of the franchise term for the purpose of determining whether a change in circumstances within the market would enable the introduction of the Sacramento Channel."

18. Section III of the Franchise Resolution is hereby amended by adding thereto a new Paragraph 8 as follows:

"8. Burden of Proof in Construction Disputes . If (i) the FRANCHISEE should in the course of the construction of the system elect to place underground cable plant in the public utility easement in front yards upon private property where there was, at the time of the FRANCHISEE's election, space available for the installation of such plant at the lip of the curb of the gutter within the public roadway, or (ii) the FRANCHISEE should fail, neglect or refuse to take pre-construction photography of the condition of any private property upon which underground construction is to occur, the FRANCHISEE shall have the burden of proof as to the condition of the private property prior to the initiation of such construction in any subsequent complaint resolution, arbitration or judicial procedure between the FRANCHISEE and the private property owner. It is expressly agreed by the parties hereto that the private property owner is the intended third party beneficiary of the FRANCHISEE's contractual obligations and promises under this Paragraph 8."

19. Subparagraphs e, f, and g of Paragraph 8 of Section IV of the Franchise Resolution are hereby deleted in their entirety.

20. The COMMISSION acknowledges that, pursuant to the provisions of the Ordinance, the FRANCHISEE is permitted to locate, install, and maintain the system, including wires and appurtenances, within easements or rights-of-way traversing private land of property owners. Heretofore, the Departments of Public Works of the respective jurisdictions have insisted that the system plant be installed, wherever possible, within those rights-of-way located with the public roadway at the lip of the curb of the gutter.

The FRANCHISEE has requested that the COMMISSION assist it in

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gaining reconsideration of the FRANCHISEE's request for approval of installation of system plant in the public rights-of-way located within front yards rather than at the lip of the curb of the gutter in the public roadway. The FRANCHISEE has indicated that the approval of such installation would result in substantial cost savings to the FRANCHISEE and further, will expedite the activation and operation of the system more efficiently.

Further, the FRANCHISEE has consented to a shifting of the burden of proof in property owner actions alleging damage to private property as a result of the installation of system plant in the front yard easements as opposed to the roadway easements.

Accordingly, the COMMISSION herewith respectfully requests and recommends that the Departments of Public Works of the respective jurisdictions review the entire matter with the FRANCHISEE with a view toward the reduction of costs of installation of the system plant. Further, the COMMISSION authorizes its staff to cooperate with said Departments and the respective Directors of Public Works in furtherance of the FRANCHISEE's proposals to locate the system plant whereof the FRANCHISEE may reasonably request, but only to the extent permitted by, and in accordance with, all of the terms and conditions of the Franchise Documents, including without limitation the required restoration of any private property so utilized to its original condition.

Further, the COMMISSION respectfully recommends to the respective Departments of Public Works that due consideration be given to pre-approval of larger segments of the underground construction area.

Nothing contained in this Section shall be deemed to waive, excuse or mitigate to any degree whatsoever, any non-performance by the FRANCHISEE in the event that one or more of the respective Departments of Public Works of the respective jurisdictions should disallow the FRANCHISEE's request.

21. The provisions of this Resolution shall not be effective for any purpose unless and until:

- a. The City Council of the CITY OF SACRAMENTO adopts a Resolution amending its Resolution 83-920, adopted on November 22, 1983, to include provisions identical to the amendments made to Resolution No. 83-023 of this

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COMMISSION by this Resolution; and

b. The Board of Supervisors of the COUNTY OF SACRAMENTO adopts a Resolution amending its Resolution No. 83-1450, adopted November 22, 1983, to include provisions identical to the amendments made to Resolution No. 83-023 of this COMMISSION by the adoption of this Resolution; and

c. The City Council of the City of Folsom and the City Council of the City of Galt have each adopted a Resolution approving the adoption of this Resolution within thirty (30) days from the date hereof; and

d. The FRANCHISEE, the named owners thereof and SCRIPPS HOWARD BROADCASTING COMPANY have approved, accepted and agreed to the provisions of this Resolution for themselves, their successors, assigns and guarantors by submitting a Certificate of Acknowledgement and Undertaking in a form identical to that attached as Exhibit "C" hereto.

ON A MOTION by Commissioner \_\_\_\_\_,  
seconded by Commissioner \_\_\_\_\_, the  
foregoing resolution was passed and adopted this 7th day of  
March, 1985, by the following vote, to wit:

AYES:

NOES:

ABSENT:

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Chairman, Sacramento Metropolitan  
Cable Television Commission

ATTEST: \_\_\_\_\_

Clerk of the Commission