

TRANSCRIPTION:
Open Video Systems and the
Media Marketplace

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PANELISTS:

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Jeffrey Hops - Director of Gov't Relations, Alliance for Community Media
Meredith Jones - Chief, FCC Cable Services Bureau
Monroe Price - Professor, Benjamin N. Cardozo School of Law
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Eli Noam: Good evening ladies and gentlemen. I'd like to welcome you. I'm Eli Noam, the Director of the Columbia Institute for Tele-Information, and we have a wonderful event here, dealing with an important topic. That is, I think it is important. The reason why is I would like to have the panel tell me whether this is real or hypothetical. It is the question whether the option of an open video platform, the one that Congress introduced in its legislation, without, it should be noted, virtually any public debate or hearing that I can recall, just kind of came suddenly. And so the question is really is this a realistic option? Of course, it is one of those three options, and I'm sure we'll hear more about it. But is this an option that anyone is interested in, before we get hung up on the details on exactly how we're going to structure something that nobody's going to use anyway. And so one of the things that our panelists would like to address is how will this happen, and secondly will it happen? As I understand this, there's a common carriage model and there's a cable television model as auctions. The cable television model - let's call it the contract carrier versus the common carrier and then there is this hybrid in between: the open video platform. I have actually done some thinking on the question of common carriers competing with non-common carriers and I have come to a conclusion in a paper called the Impending Doom of Common Carriage that the two really can't coexist in head to head competition. Contract carriage is more powerful. I'm not saying this as an advocate in any way. I'm just observing the economics. And that there's really no hybrid possible between them so that contract carriage is in the last and private carriage is going to be dominant. And so the question is will the FCC, will Congress, be able to establish a third auction in between,

especially since the auction is a voluntary one, and it will be voluntary in return for what? In return for some deregulation, for example, absence of rate regulation. But then the question is can it truly be unregulated in terms of rate, if at the same time the law requires that prices will be nondiscriminatory. Well, how can one figure that one out, unless one does some analysis continuously whether the rates are appropriate and nondiscriminatory. So those are some of the issues I think that we will have to analyze here tonight. And so we have a wonderful panel dealing with this. But before I introduce Tom Landry and the panel to you, I also would like to share the excitement with you of something new that we have just unveiled at Columbia last Friday, which we call the Virtual Institute for Information, V.I.I., you know, N.I.I., G.I.I., why not? And that is, for all of you interested in media communications information research, a wonderful tool to find other work on areas of interest to you, and also to post your own work, because it is a platform with a translation into HTML in a Website, and search engines in which you can log on and then look for other work on subjects that you're interested in, both academic, government reports, other institutions, linkages, whatever, and post your own stuff on it too, plus a lot of other features. We will have time at the end when Steve Messer, who has been masterminding this, will give you some more details. We are very excited about it. It is quite unique, and this is very useful particularly if you are not continuously in touch with other people working in this area. Now, this event tonight is largely not my doing but Tom Landry's. I would like to introduce Tom. Also we'll introduce the topic. Tom has identified the speakers and organized this event and we are extremely grateful that he came to do this. He is getting his doctorate at the law school and we should be expecting great things from him, so he'll introduce the topic: the open video platform.

Tom Landry: Well, VDT is dead, long live OVS. I want to set the stage and get right to the panel. They are the ones you want to hear tonight. Things were simple in the old days, when you had video programming delivered by broadcasters and telephone companies delivering point-to-point personal communications and that was about it. Of course, since the 1960's, a lot of the walls have come down and now you have video programming delivered by landline cable and by over-the-air subscription services in addition to the old broadcast services. And you have personal communications delivered by over-the-air as well as traditional landline telephone services. But one thing hasn't changed, and that's that telephone companies still don't provide video programming. That may be partly because of their facilities which aren't built for that. But perhaps it's primarily because the FCC in 1970 adopted a policy that prohibited them from delivering video programming to customers in their service areas. That policy was incorporated into the Cable Act of 1984 which federalized cable law in the United States. But telcos remained interested in video delivery and the FCC adopted a model called video dialtone that permitted telcos to provide - well, it was basically a common carriage model. It permitted them to provide the conduit but not the content for video programming. We're gathered here today to pay our respects to VDT and to greet the new edition to the media family which is the open video system. The Telecom Act of 1996 decrees that the FCC shall abandon its VDT approach and that telcos may provide video, as Eli said, in any of three ways, as cable systems operators, as radio operators of DBS, MMDS and so forth, or as open video system operators. Well we know what cable is and we know what over-the-air services are, but what's an OVS, and how will it work, what will it mean for competition for consumers, and as Eli suggested, not only if they build it will anyone come but will they even build it? The FCC's considering in the pending rule making, but for now let's get into it with our own panel of distinguished experts, the

first of whom will be Professor Monroe Price of the Benjamin M. Cardozo School of Law. Professor Price please.

Monroe Price: I think OVS is a little bit like, Eli said, the distinction between overly hot and overly cold and the question is can you find something in the middle? This is a bizarre statute, which I think has quite a lot to do with VDT. I might disagree with how any of it might be interesting to look at the extremes of VDT and to see how much it will influence the development and exact formulation of the OVS system. The business is a system in which the statute has a lot of really difficult problems in it, and I'll try to get into some of them. And the industries, the telephone industry, the cable industry, are battling, in some ways to make it operable, in some ways to make it inoperable. I think that one of the questions here is, what will be the result in terms of the clash of industries and how things will be resolved? I'd like to step right into some of the particularities of it. First thing is, a requirement that a telephone company receive a certificate from the FCC before it goes into the OVS business and this certificate has to be approved by the FCC within ten days of receipt. And these are incredibly elaborate systems and one of the issues that the FCC tried to do within the NPRM, is how can we test whether or not an OVS system is in compliance in ten days, and of course the answer is probably they can't. This is part of the Congress's effort to impose lots of regulatory aspects and then claim that they're deregulating by slapping the agency at the same time. Among the things that have to be in the certificate, for example, are an indication that the OVS system will not discriminate against the assignment of video carriage, and it won't be discriminatory, it won't provide unjust and unreasonable rates or rates that are not - let's see if I can get the exact term because it's such a wonderful term - it doesn't provide for unjust or unreasonable

discrimination. Now here, the first difficulty exists within the statute. That is to say, what constitutes a just and reasonable rate, and a rate that's not unjustly or unreasonably discriminatory? Built into it is some suggestion that there is a possibility of discrimination and the FCC and the NPRM has suggested that there are grounds on which an OVS operator can discriminate in terms of the nature of the services provided, the cost of obtaining or providing the service. That there might be a potential that the FCC wasn't clear about this, of discriminating between non-profit providers and home-shopping or pay-per-view providers. But any rate, this question of what constitutes discrimination in carriage and what constitutes discrimination if at all in rate regulation is one of the big issues right off the bat in a certification process. And as I think the FCC said it's going to resolve, and it will say, if the OVS operator declares that it will abide by these regulations, generally that will be sufficient for certification, and then it will be up to a complaint process or a factual determination afterwards to see if the OVS operator is not in compliance. The thing that's quite interesting is another provision of Section 653 which says that if demand exceeds supply of cable channels, then an amazing thing is triggered. The OVS operator, which prior to this trigger was permitted to program the channels itself or through an affiliate, is now restricted to one-third of the channel capacity. This itself poses a really interesting issue because it may well be that, for one thing, in a digital world, it's hard to tell what one-third of the channels means. I think that there's some indication if this is a switched system, this problem falls out. How do you distinguish between the analog and digital systems? This was a problem in VDT itself where there might have been discrimination in terms of assignment of digital versus analog channels. At any rate, this clip of one-third is really an amazing thing. One of the issues I'm concerned about is, what does it mean to say that demand exceeds supply? Does that mean that the pricing of channels is not appropriate because

you would think there would be a market clearing price at which that demand curve would intersect with a supply curve. So it's only because there must be something in the pricing structure that could lead to the situation that demand would exceed supply and the operator wouldn't have the capacity properly to price it. And that leads to another set of questions which I'm sure we'll get into and that is cost allocation and insurance that not only our rates are nondiscriminatory, but they are just, and the question is what "just" means? Do you mean just to the telephone regulated subscriber, or does it mean just in terms of the cable operator competitor, or what? What is just? Who is to be served by the just rate here? And is the rate that's just that rate that is not market clearing, but leads to a situation in which demand exceeds supply? I think I'm running out of time here, but I'll pick one other or two other really interesting issues... And that is the must carry provisions. This statute imports almost as to simply a number of provisions from Title VI, one of which is the must carry and PEG channels. And it's not clear in this statute what must carry applies to; if the OVS operator is programming, in a sense, 20 channels or 70 channels to look like your cable operator, you can think of must carry as part of that. But what about the affiliated channels that are also on this OVS platform? Does a must carry operation apply to them, and does the cable operator have the duty to assure that there is a kind of buy through of a must carry tier before any other signal on the OVS platform is acquired by the subscriber. So a model which you might think of, which is, this is the heaven-sent relief for the start-up program suppliers, say he wants to call up and say 'I want to get on your platform', the question is 'Will we have to go through the must carry in PEG to buy a single channel here?' So, I'll leave you with that and continue the questions.

Eli Noam: The format we'll have is where the speaker speaks for six or so minutes. There can be

instant questioning and replies before we get to the next speaker. Just not too long so that it's not just the speaker speaking. So we'd like you to question or to comment and that goes to the panel too.

Question: What is the constitutionality of the must carry as applied to OVS given that it barely survives the must carry on cable? I guess the question is ultimately can the same argument be made - that is if it's important, which I'm not sure it is - to have a free over-the-air broadcasting system? And it's potentially OVS that's going to be a substitute for cable; we don't know whether it is or not. That is, is this a substitute that's going to overwhelm the city? That there's going to be a massive shift to an OVS system? In fact the two operators themselves will choose an OVS model. And the question is can you do it in a protective way?

Answers (panelists): We were one of the plaintiffs in the case that is going back to the Supreme Court this Fall. We're fairly hopeful that it's going to be struck down this time, given that as the Professor said, that it barely survived last time and what it was remanded to the District Court for was to see whether broadcasting really was in genuine jeopardy. And the discovery clearly showed that broadcasting is not in any serious jeopardy, and therefore the basis the Supreme Court had on doesn't even exist. So I think it's going to fall down altogether.

I think that the one factor that you have to consider is that there's also a desire for some regulatory parity between OVS and cable so if must carry is going to apply to the cable operators and if a certain amount of the platform is going to be taken with must carry for cable operator, there's an interest for having parity if an OVS operator is going to compete.

This is an argument which is going to be made constantly which is the distinction between deregulation in a level playing field.

You know there was a similar provision for carrying public programming. And just to show that we're not only looking out for ourselves, but really do take the First Amendment seriously, we challenge that provision too. Unfortunately, for us, that's one thing that the District judge did declare unconstitutional. So we didn't end up getting the parity, but when we looked at the issue, we thought that they should both fall.

Eli Noam: Let's move to our second speaker here. I would stay away from the introductions because we really want to hear them and we have provided you with biographical details that you can glance or read at. These are extremely distinguished people and it will take half an hour just to introduce them. Meredith Jones, of the FCC, who will have to decide all this before it goes to the Supreme Court.

Meredith Jones: Luckily it's the office of General Counsel that will go the Supreme Court, not me. I'm Chief of the Cable Services Bureau at the FCC and it's the Cable Services Bureau that's been charged with the staff work of putting out, getting together a notice for the Commission's consideration, which the Commission issued in March. The comment period for that closed April 11. We've been reading the comments and we've put together a proposal for the Commission to consider to adopt the final rules. One of the things about the OVS statute in the 1996 Act is that it requires the Commission to have final rules, including a reconsideration proceeding by August 8,

so we have a very, very short amount of time to do with, to give you some sense of where we are in terms of timing. I just meant that the law requires that we have the final order adopted and then have a thirty day period following the final order during which people can petition for reconsideration of the Commission's ruling, and then we were required to have a fifteen day reply period to the petitions for reconsideration. So if you start with August 8, you're back 45 days from there to just meet the minimum statutory requirements, and then we have to get it published in the federal register which takes extra time. So that I guess what I'm trying to say is that very shortly after we disband tonight, you shall be able to click on the Cable Bureau's portion of the FCC's Website and see it coming out which I don't know if any of you are interested in but we do have it, let's see, [http, www, and then it's fcc.com](http://www.fcc.com). But we in the Cable Services Bureau do put everything up there. I think what we see at the Commission is a lot of what went on with VDT, you do see in the OVS. I mean immediately prior to the adoption of the 1996 Act, the Commission was considering the VDT item and trying to consider what portions of Title VI might or may not apply and what portions of Title II apply. And I think what Congress decided to do in the 1996 Act was to give the Commission some clear guidance on how to go forward. I think that the bottom line of the OVS is that in exchange for the OVS operator agreeing to give up two-thirds of its platform to unaffiliated programmers, the OVS operator is relieved of many of the requirements of the franchise process that cable generally goes through. The OVS operator must pay a matching franchise fee on its revenues that is equivalent to the franchise fees the cable operators pay on their revenues and also it must match the must carry and the PEG obligations that are imposed on the cable operator. But there are other things in the franchise process that people have found time-consuming that the OVS operator would not have to go through. And from what we hear from people who are interested in exploring the OVS is just

the franchise process is time-consuming for no other reason than that there are another 33,000 franchise areas in the US. And the way cable has been able to build out is that each cable company has entered into agreement with each franchise authority for each area in which it operates. So that was a big factor in the telephone companies' interest in getting into video service.

I'd say we've now digested all of the comments and the reply comments that we've received in the OVS system, and I think that there are some key questions that come out of it that we need to look at in reaching a final decision with respect to OVS. I would say one major question is that statute clearly says that local exchange carriers (or LECs) can become OVS operators. A major questions is can a non-LEC become an OVS operator? Obvious non-LECs who might care to become OVS operators are cable companies, electric utilities, and other kinds of people. But those are the two large contenders. Second, which has been related to by prior commentators, is can the OVS operator take all of the analog capacity on this system for itself? In other words, when the statute talks about the OVS operator having one-third of the capacity being reduced to one-third of the capacity of the system where demand exceeds the capacity, could the OVS operator say "Well, I'll take one-third but P.S. it'll be all the analog capacity of the system and other programmers are relegated to a digital capacity." In the days of a video dialtone most of the people trying to get on the system today want analog capacity. And I think in the number of the trials what we saw was an oversubscription to the analog capacity and the dearth of application for the digital capacity. The question that we had asked is that statute reads that the OVS operator can be reduced to one-third of the capacity if other unaffiliated programmers have demand in the end that exceeds supply. The question we asked was whether the OVS operator could be reduced to one-third of the capacity if that would leave the OVS

operator with less capacity than an unaffiliated programmer; which would be happening for example if an unaffiliated video programmer came in and said they wanted all of the capacity, the only other person they wanted to go out of system was the OVS operator, would the statute, would the Congress contemplate reducing the OVS operator to one-third of the capacity allowing the unaffiliated programmer to get two-thirds?

A major issue is also how the program access rules, laws, and regulations will apply in the OVS. Under the 1992 Cable Act, satellite delivered programming that's vertically integrated with cable operators has to be made available to competing multi-channel video programming distributors. So the question is how does that work out on the OVS platform. We've had programmers who come in and say, well technically we're subject to the program access rules, but if we go on the platform as an unaffiliated programmer, we don't want the OVS operator, somebody else on the platform, being allowed to offer our programming because then we've got nothing to sell if our competitors on the platform can also sell our program. That's the major issue. And I'm not trying to signal how the Commission is coming out; I'm just telling you what the big issues are. Can cable operators be treated differently then, if cable operators are allowed to go on a platform and put together a package and become an unaffiliated programmer? Can the OVS operator treat the cable operator differently from other programming providers on the platform? This would be a concern that a telco might raise, that telco builds the platform, the cable operator who's already operating in the area and wants to come in and take up the capacity on the platform. The major question that we've had is how should the certification system be structured? How can we make sure that in this ten day window that we actually have any ability to look at the applications or that others have any ability to call

things to our attention. The question that city, state, and local governments are very interested in is the extent of their control over the use of the rights-of-way by the OVS operator. And then the final major question that was alluded to is the just and reasonable rates of carriage, how those are determined. Should we have presumptions? Should we, for example, say that if x% of the capacity of the system is used by unaffiliated programmers that we'll just presume the rates reasonable? If you have a safe harbor of that nature and it's not met, then what do you look at to see whether the rates being charged are reasonable. So my time is up.

Question: Are there Video dialtone systems currently in operation?

Meredith Jones: Yes. There are some limited video dialtone systems that went into operation just before the Act passed. There's one in California. There's one in Dover Township, NJ. Many of the video dialtone systems set up prior to the Act, we've been advised by the owners of those systems that they are going to convert them to cable. I think one of the best questions that I didn't address is, will they build it? I think that is the biggest question in OVS. If I could have one more second I'll tell you what I think. I think one of the big issues is whether you can get to a switched digital system. Because I think when I listen to the people who've come before us, the people who talk about switched digital seem to have many, many fewer problems with all of these questions that I'm raising than the people who come and talk about analog systems. What we hear from the people who talk about switched digital is that if you have a switched digital system, your capacity is virtually infinite. So that all of these issues about who gets a third, are we cut back, can we make a go of it with the third, do we charge the just reasonable rates to an unaffiliated programmer - they become much less contentious. Because, for example, one major Bell operating company came in and said

if we do a switched digital system for ourselves, we're confident that we will always have enough capacity for what programming we want, and we view any unaffiliated programmer coming on as somebody who is just contributing to our cost, to helping us cover the cost for the system with no marginal burden on us. And that's just a very different attitude than people who are focusing on analog systems. With analog systems there's a lot more contention.

Question: How much control do OVS operators have?

Meredith Jones: You mean would you still have to allow people to come on? You wouldn't have the complete control that a cable operator has, which is to say I built this for myself and I'm not going to carry anybody else.

Question: When will the FCC post its final order on OVS on the Web?

Meredith Jones: No I didn't say tomorrow. I didn't mean to say tomorrow. I just meant that by the end of the month, beginning of June you can look at.... Very often I think the Commission is known for proceedings that take years and years and years, and I'm just trying to stress that this is not one of those. But it's not going to be tomorrow. I guarantee you that.

Question: What rate regulations will apply to OVS operators and will we see OVS operators in a position similar to SNET's position in offering telephone service in Connecticut?

Meredith Jones: Well, first, I'm not a business person for a telco, and I'm sure there are people on this panel who can speak a lot better to it than I could, but I will point out two things. One,

Connecticut is different from many states, it's one of the unusual states in which you have a single franchise authority for the entire state. So, when SNET went in and worked with the Connecticut PSC they then got statewide coverage. And there are few states that are like that, I think four or five. But that is rare. And the other thing that I want to mention is that when you talk about the regulation of cable, the rate regulation of cable, that would not be applicable to anybody building an OVS in reality. Conceptually I guess it could be. But under the 1992 Cable Act where effective competition exists within a franchise area, there is no rate regulation. Effective competition exists when there is more than one multi-channel video programming distributor in the area. And they offer in the aggregate services - the aggregate of the multi-channel video programming distributors who are not the major multi-channel video programming distributor for the area passes 50% of the households and 15% of the households take their video service from the nondominant provider. Well, with the advent of direct broadcast satellite, which is under our rules considered a multi-channel video programming distributor for that 50-15 test though not for the new test in the Act. For the 50-15 test, that means that the 50% pass rate is met everywhere except perhaps Hawaii and parts of Alaska. So then you're really looking at the 15% take rate and since cable is taken by more than 15% of virtually every franchise area, I mean "you" really the OVS provider, for the new entrant whether they come in through cable or through OVS rate regulations is really not an issue.

Question: Is this really a problem?

Meredith Jones: Well people come in all day and tell me that's a big problem, so I don't know.

Eli Noam: Well thank you very much. So, now we have Leslie Vial the General Attorney Federal

Regulatory for Bell Atlantic. And as you know Bell Atlantic has been perhaps the most active or certainly one of the most active LECs in the video field with various trials and experiments and applications.

Leslie Vial: Thank you. Just to answer one question that was raised earlier. The first commercial video dialtone system is in Dover Township, NJ, which is Bell Atlantic's system. And maybe we have a few hundred, maybe a couple thousand customers up in Dover Township right now on the video dialtone system. OVS is actually one of four - I hate to correct my the previous speakers but - four options for telephone companies. It may seem unlikely that anybody would choose common carriage, but that is a fourth option in addition to cable, OVS, and the radio broadcast. One thing that I think is clear about OVS is that we don't know what it is going to look like. It is new; there are lots of issues. As late as this morning I was having a debate internally in the company as to how we are going to do particular aspects of this. And we believe that as a result we really need some market experience, some trial and error to find out whether this is going to work and how to make it work. But we do believe that we will offer OVS and we'll use that as an entry vehicle into video, and I know Meredith has heard this before, if the rules come out right. We see two big differences between OVS and cable, and they've been mentioned before. One is of course is that OVS is open. It's not common carrier. The second is that it brings with it reduced regulation. The primary one of those, as Meredith has mentioned, is no franchise obligation, although we do pay the franchise equivalent fee. It also means no Title II regulation, and having gone through some experience in video dialtone, that is significant to us. There is a question on how these aspects of regulated but not regulated square. There is a question of how we will make sure that it is open. We do have an

obligation to be non-discriminatory. We also have the ability to offer or to carry programmers with rates that are not unjustly or unreasonably discriminatory. From our viewpoint, we are the new entrant entering a market that has one and maybe two multi-channel video program distributors in it already. And as a result, we need to be able to meet the expectations of the customers, and in this context, the customer is the programmer who wants carriage on the system. If we are required to do things, have uniform rates, have public contracts that other vehicles are not required to have, we think it is likely we will be disadvantaged in the market. We also think that this makes a viable program for independent programmers who in many instances are foreclosed from the market right now. It may be obvious from what I've said, but we are one of the companies that is talking switched-digital video and moving in that direction. The system in Dover Township is the first generation of that. So we agreed with Meredith; we don't see that we face all of the same issues that I know others think they face. As the platform for independent programmers, however, if we can't make a go of this, there is no platform, and therefore, I think that there is a balance that the FCC - the FCC recognized the question and we hope that they will come out in the right place on the balance between competition between an OVS system and the incumbent cable operator or incumbent DBS system and intra-system competition - competition among the programmers who are on the OVS system. In our view, if you let the competition, the intra-system competition, be the primary driving force, you will make that system not a viable competitor to the cable system, and you will lose the benefits of it. We have argued that what the FCC should do is enact simple rules, not try to decide everything upfront, since we don't know how this is going to work out; if you try to figure it out now without any real experience, you might get it wrong. You put yourself in the position of dictating technology, maybe inadvertently, but nevertheless, technology and markets. We

recognize that there may be complaints, questions, and the FCC has proposed and we have suggested in our draft rules that we submitted, that the complaint process with real concrete facts in front of the FCC is the way to resolve that. I guess I would like to address a couple of the questions that have come up just in reasonable rates. I think, at least we view "just and reasonable" as an old Title to a common carrier concept, and because the Act says that the Title II regulation is not what should do for OVS, we think that "just and reasonable" has to get away from all of the baggage that came with Title II. The market, we think, will set just and reasonable rates. I guess I would say with Professor Price, that if you can get to the right price, that should be just and reasonable. With respect to PEG must carry, the way that we have suggested that that happen, is that that be the OVS operator's obligation, but that whichever programming provider a customer takes should have the obligation to include those programs with that package. We don't call it a tier by-through, but I assume that it functions more or less the same way, and I would assume that if must carry is not constitutional for cable, it's not constitutional for us, either. I see that I'm coming to the end of my time, I will perhaps just stop and have people ask questions.

Question: What rules regulate the current VDT system?

Leslie Vial: Our system, the Dover Township system, was authorized under the Commission's video dialtone rules. When the Act passed, it eliminated the video dialtone rules but said this should not be construed as requiring the termination of systems that are currently authorized. So we're currently operating just as a common carrier system. Once we see how the rules come out, we intend to make a judgement as to which option we want to proceed under for that system.

Question: Will the product be very different, or is this going to be just like cable from a viewer's perspective?

Leslie Vial: This is one example that we have from Dover Township that, unfortunately, didn't become a reality, but we believe is one of the opportunities for OVS, is that we were approached by the Korean cooking channel. This is something that is not likely to get carriage on the cable system, but that person, that entity, thought that there was a niche market and thought they could make a go of it on an open system. The hangup there was that under the Title II common carrier rules, we were not able to assist them with marketing and various other things that they thought they needed help from us or from somebody to make a go of it. When we couldn't do that, they thought it was not viable for them.

Question: What is happening with TelQuest and FutureVision?

Leslie Vial: I can't comment on very much. TelQuest is not part of Bell Atlantic, first of all. TelQuest has agreed to purchase FutureVision which was the initial programmer on the Dover Township video dialtone system. And I know that there are issues with trying to get a slot on the Canadian satellite, and you've now exhausted my knowledge on the subject.

Question: Is the open-video system in Magnavox switched digital video likely to be a viable business prospect simpler to administer. And if that's true, do you think that moves you towards fulfilling your goals?

Leslie Vial: To answer the second one first, yes, we think it moves us towards offering advanced

telecommunications. And the first one - is switched digital video simpler? It's a new technology, and new technologies are never simple. But a number of the problems that people who're doing analog or analog digital hybrid systems see, I think we do not see; people have commented that a fully digital system, or a switched digital system has unlimited capacity. That's true, but it's not without cost. The electronics - all the things that you need to do to increase capacity - come at a cost, and there are certainly business judgements and trade-offs that have to be made. Nevertheless, we do think it's a more flexible technology and that's one of the reasons we're going in that direction.

In OVS, we don't know what the rules are yet. And there is a requirement in the Act that if the operator has a gateway system, some kind of a menu system, or makes information about programming available, it needs to make information available about all the programmers in a non-discriminatory way. There's a distinction, I didn't get into this - we can later if you want - but we see a distinction in some ways between the system itself and perhaps our affiliate who would be offering the programming, and in some ways we have sort of thought that responsibilities would divide differently among those two.

Eli Noam: Thank you very much. We now have John Urban, Vice President Government Relations, Cablevision. This system's one of the largest cable companies in the country and certainly in the metropolitan area of New York.

John Urban: Thank you. I'd just like to pick up on a comment that Meredith made because she said that when people come in to visit with the Bureau and they're talking about switched systems, there's a lot less contention. And I think that you meant that from a contention, as far as business contention,

but I think that word's important because it's also contention from the standpoint of network contention. I mean, that's why there's contention and the FCC, because you have a network where you have a number of potential programmers that can't get access to the network unless it's either a switched digital network or an HFC network that has digital capacity so it has channel capacity to the level that there's not contention to get on the network. So I think that contention is an important word that has multiple meanings.

Cablevision is interested in OVS for a number of reasons. We're interested in it because we are a cable provider, and OVS is a potential competitor to us or interested from a standpoint of parity. We are also a programmer and Cablevision has been a niche programmer. In addition to American Movie Classics and Bravo and things like that, we have a very niche-oriented programming. We feel that if OVS is a viable platform, that it would be a special interest to us because we specialize in niche programming.

My involvement in OVS goes back to some involvement in video dialtone. Originally, when I was a state cable regulator, and I was involved in the commenting phase of video dialtone, and at that time, I was very intrigued in video dialtone. I remember the rulemaking that came out said that the concept was something that was analogous to the public switched network, although it would offer you to transmit video. And I think that that's very intriguing because it not only allows for niche programmers to program, but that concept really allows for individuals to program. And perhaps is something like what the Net will eventually be if there's more capacity on the Net. So that concept of an open system that not only businesses can get access to program, but also small businesses or individuals can get access to program on, to me is very interesting. The problem going forward and implementing video dialtone was, A: the slow development of switched video and B: the slow

development of digital boxes for an HFC platform. So you have this concept of non-discriminatory access to a network, however you had networks limited in channel capacity and you got that contention problem. The interest in starting video dialtone was really two-fold. One was that kind of theoretical interest in creating that platform that would be open, that would be common carrier. There had been a lot of concerns in the past about the fact that cable controls its content and you have a lot of other programmers that want to get access to communicate, and they don't have that opportunity. So there was that interest in sparking video dialtone, but there was also an interest in using video dialtone as a method for telephone companies to get into the video business because the 1984 Act had a restriction limiting the ability for telephone companies to get into the business. With the lifting of that restriction, you now have a situation where the interest in video dialtone should be very pure, and the pure interest should be in this concept of a common carriage basis of delivering video. However, there still remain concerns about cost allocations, and I think later we're going to hear a little bit about that. Because when you have this common carrier network, if that network is also carrying telephone traffic then you have questions about how are you going to determine the cost allocations and who's going to pay for what. Are telephone repairs going to be paying for the development of this new service? The FCC is on its way in developing regulations. We heard an interest in making sure that OVS doesn't become front-loaded with regulations. But I'd like to share with you a couple of experiences that we had with video dialtone and experiences that I got involved in and without pointing fingers or naming names and I'll even say that no one on this platform, or no one on the panel is named. But let me just go through an experience that Rainbow, our programming company, had with video dialtone. In January of 1995, Rainbow sought capacity on a LEC's video dialtone platform. We had actually sought access to I think virtually every video

dialtone platform. Again, this is the programming side of the company. On April 27th of that year, the LEC responded to Rainbow's request for capacity, informing Rainbow that a formal request was necessary to secure platform capacity. The very next day, that LEC received a request from its unregulated subsidiary to secure the rest of the channels that were available on the platform. So Rainbow asked for a request on the platform. We were told that a formal request would be needed, and the very next day, an unregulated subsidiary of the telephone company that owned the platform said, "Well, we want the rest of the channels." In May of that year, Rainbow followed up and formally requested the channels, and the LEC notified the Commission that it had a capacity shortfall, and then finally it went to the State and the State said that there was a shortfall problem and that they didn't foresee the ability to remedy that shortfall problem. That experience could well be replicated with OVS, and that's really the concern, I think. If there is the alleviation of a contention problem, if there is such capacity that you get non-discriminatory access, then I think we'll all be in good shape. But if there isn't non-discriminatory access, and if there aren't protections to make sure that non-affiliated programs can get access to the platform, then we're going to end up, not with an open platform that has non-discriminatory access, but we're going to just end up with the same kind of platform that we currently have. So to answer the question, is this real or hypothetical, I don't think that we know the answer today because I think that the answer is somewhat dependent upon the development of technology as far as switched video and as far as compression for digital carriage. But I do think that it's very important that the FCC not feel compelled to create OVS, and feel compelled to make sure that this system works. I think that the FCC should develop regulations, put it out there, and if it works, it works; perhaps it won't initially work but it will over time. But I think that there is a general concern that there not be an interest in

handicapping the system, or restructuring regulation so that it's somehow insured to work. Because if it's insured to work, I don't think that it's going to. Unless we have the promise of technology, I don't think it's going to fulfill its non-discriminatory requirements.

Question: Are you, as a cable operator, complaining that the telephone companies are acting like cable companies?

John Urban: No, I think what we're saying is that if you want to be a cable operator, you now have the ability to be a cable operator. The restriction that was in the '84 Act has been removed, and if you want to be a cable operator, fine. There's a regulatory structure for that, and in fact, in Ohio, we're facing that situation with Ameritech where they're franchising in areas where we're serving, and we will be competing with SNET in Connecticut. SNET is franchising and we'll be competing with SNET. As far as OVS, if it's a different platform, then it should be a different platform; it shouldn't be cable.

Question: As far as public access to the OVS platform?

Answer: The statute says that if the local franchising operator requires public access as authorized under the '84 act, then it'll be required for the OVS operator. There are a lot of complications because these are cross-jurisdictions and it's unclear what public access provision would apply. And it's not clear that the city gets to enforce it. I don't know if the city enforces it, but it's a curious but interesting aspect of the rules.

John Urban: But I think there is an interesting question about the public access because in the

definition of franchise, public access works its way in there. For example, I'm familiar with Massachusetts, where you have a very low franchise fee that goes to the regulators. However, the fee between the state-mandated fee and the 5% federal fee is taken up usually with monies that go to public access. So the monies that are with OVS, the monies that are in lieu of franchise fees would be public access monies. I'm not sure exactly how those are dispersed in that particular state. I'm not sure how that's going to be addressed.

Question: In the situation that you related to us, how many channels did that system have? Answer: Maybe I could ask Leslie Vial to tell us how many channels Bell Atlantic envisions an OVS having. There's sort of a sense of how OVS provides limitless capacity, yet I'm wondering if it's any different from VDT where you had obviously some capacity...

Leslie Vial: Dover Township has 384 channels. FutureVision is offering about 70 right now. And actually, Rainbow has reserved channels there that are not currently in service.

John Urban: In the particular case that I was talking about, the initial representation was that there would be 80 analog channels and 200 digital channels. The final outcome of this before it failed, was that it was going to be 76 analog channels, kind of a plain old cable television system. I think that the Dover experience *is* substantially different because it does have the high capacity; it is much more of a real platform.

Question: What program access rules will apply?

Answer: Program access is a real dilemma with this because you have programmers out there, and if there are program access rules, then all of a sudden, that means that the owner of the platform, rather than the platform provider can take that programming. So then there's no one left to access the platform in a non-discriminatory way. So I think that there's probably a need in the reality of it. I think that there's probably a need to, over time, make sure that the programmers don't play regulatory games, and just withdraw programming completely and sink the concept of OVS. However, personally, I think that, straight out of the box, to use program access really defeats the whole purpose, because then you won't have a non-discriminatory access platform because all the programming's going to be grabbed by someone who's going to control it. You're not going to have the opportunity for the programmers that are out there to really access the platform on their own.

Eli Noam: Thank you very much. I should also tell the panelists that you can also respond to the questions as long as you want to respond. Jeffrey Hops is the Director of Government Relations for the Alliance for Community Media, a public-interest group involved in telecommunications law and policy. He has also been staff to our own Congressman Jerrold Nadler.

Jeffrey Hops: I'm going to, first of all, give you three things. First, I was going to give you the short description of the Alliance for Community Media and what it does. Then move to the Seven Deadly Sins of OVS. And third, tell you about how the Alliance perceives the reality of OVS. First of all, the Alliance for Community Media, is, in the most standard sense, primarily a trade association for public educational governmental here and after PEG channels on cable TV. For Manhattanites, that would be Manhattan Neighborhood Network; that would be the All-City Council channel, the Board

of Ed channel, and so on. We consider ourselves to be a public-interest group. Multichannel News, a trade paper, called us this week, a "so-called" public-interest group. So if you would like, we are a "so-called" public-interest group. We consider ourselves a public-interest group and therefore, I consider it my role here to spice up things a bit, and if I don't have at least half of the panelists here ready to have my blood by the end of my six minutes, I haven't done my job. We're very interested in First Amendment rights in the electronic media, and because the content of access comes so much into money, surprisingly, it brings us into consumer issues, as well. So that being said, I want to tell you from the Alliance's point of view, what our concerns are about OVS. We came up with seven major concerns, so we're going to call them the Seven Deadly Sins of OVS. First of all, OVS is not a new technology. Nowhere in the statute are any technological standards required. So we don't want to get into the trap thinking that there's a demand that there's a switched digital requirement in here. It's not there. It's an undefined regulatory paradigm, which may or may not use new technologies. No hardware change is necessary at all, and as I'll get into, one of our concerns is that, in our worst case scenario, a cable operator will become an OVS operator with a simple change nomenclature. There's no switched network requirement. So that's number one: OVS is not a new technology. Number two: OVS does not absolutely require any third party access. As our other panelists have noted, what it does say is that two-thirds of the system may be made available to unaffiliated programmers, if, and only if demand is made. Now what is demand? Well, demand is not specified in the statute. If the price to get on the system, is \$1000 per hour per sub, there probably won't be any demand and the OVS operator could take all the programming for itself. And when you read the regional Bells' unified comments, you will see that the flexibility that the regional Bells ask for in shaping who can get on under a "so-called" non-discriminatory circumstances, is so flexible as to

create a possible situation where we're concerned that there will be no meaningful third-party access. Third, OVS will not bring new entrants into the provision of video conduits. There's no requirement that OVS be a second system, either geographically or in other competition matters in a competitive manner. OVS is not required to be in a place where cable is already. It can be cable systems themselves. When you look at, for instance, US WEST's purchase of Continental Cablevision, we realize that RBOCs are already in the business of providing video services. So there's the question which I'll get to in a second about what the rationale is. RBOCs are already providing video services. We don't see that they need a new impetus to get them to do stuff they're already doing. Fourth, OVS will not create competition between wireline providers in the same geographical market. There is no requirement that a system overbuild to get OVS, the assumed beneficial deregulation of OVS status. As I alluded to before, a simple nomenclature change after a buyout can create an instantaneous OVS system which will be a monopoly in its market. So there's been an attempt by, again by the unified Bells and some other parties to say, well, we really need all this deregulation so we can compete against an incoming cable company. Well, it's not required by the statute, and the statute currently could conceivably allow a nomenclatural change upon a buyout. That is, as I mentioned, our nightmare scenario. Fifthly, we have had some talk about intra-system competition. Intra-system competition, if it is allowed to exist, which we're very skeptical about, will not drive down the cost of access for exactly the reasons that Professor Noam alluded. The market will find its level, and given that there is an additional, in addition to the market finding its level, a very strong impetus for the operator to maintain complete editorial control, we don't see the monopolistic interests in competition as really offering anything. And again, as Mr. Urban acknowledged, the rationale that the Bells are bringing into this, regarding the ability or the desire of the developer to

pick up their capitalization cost, in the case of VDT for Rainbow programming is just clearly not so. Sixth, is corporate advocates want to substitute adjudicatory processes for brightline regulation. The unified comments of the Bells were very strong about saying let's not, and as Ms. Vial commented, let's not write any rules right now; let's wait and let the adjudicatory process take its course. Adjudicatory processes are great if you have money. And public-interest groups like myself, very small operations like the Korean cooking channel, do not have the resources to bring to an adjudicatory proceeding. It's like going after a hydrogen bomb with a squirt gun as far as the justice of the system rights is concerned. And finally, I think I just want to reiterate the seventh deadly sin, is simply a repetition of what Mr. Urban pointed out, which was that, the seventh deadly sin is that this is being promulgated as something that has to succeed against cable. This point has been made already, so I'll just say that it's clear that there are four ways RBOCs can get into video programming. They're already, it's not really clear why OVS needs to succeed for a business that, indeed, RBOCs are already in. The realities for us are as follows: there is no requirement for competition for entry as an OVS operator. A OVS operator can be a monopolistic. For us, our big nightmare is this avoids to franchise requirements in local control. VDT was supposed to provide entry for the telcos but 19 of the 1996 law. Of course, gives them the right to enter outright, so it's not clear what their rationale is. Finally, what we have been stressing before the Commission is that the one important public policy rationale for OVS is the openness of the system. It should be a clear quid-pro-quo, where we have pretty much complete openness in exchange for deregulation. But we are very, very pessimistic about the outcome of this because we are concerned that the unified commenters will have their cake and eat it too. So in conclusion, I just want to say that the Alliance for Community Media, a "so-called" non-profit group has no objection to making OVS profitable.

Business people are in business to make a profit, but profit is not definitionally the public interest. If OVS is to serve public interest it has to reach qualifications that go beyond the mere the bottom line. That's it. Any questions?

Question: Why is it from the public interest a nightmare scenario for cable companies to become an OVS?

Jeffrey Hops: Well there are two reasons, one related generally to our concerns about local governmental control and the good we see that it brings to the citizens of states and localities. Secondly related specifically to pay. First as far as what it brings to states and localities, if you look at Title VI you'll see that in addition to the rate regulation there are a number of public service, quality of service, consumer protection regulations that simply go. When there is a transfer to OVS they just go straight out the window. Secondly, we see the property, the public rights-of-way which cable operators use to run their cable as a public trust. You, those of us here who are citizens of the City of New York, we have an ownership right in part of what the city has, as its property. And if there is a transfer to OVS, and some of that exercise in control is diminished, then you, as citizens of the City of New York have lost a concomitant control over your City rights. With respect to PEG I also want to say that the regulations currently being considered by the Commission contemplate an interconnections between public access on PEG and public access on OVS. I have a very, very dire concern that if a cable operator is allowed, this really is our worst case scenario. If a cable switches over to OVS, the OVS operator says, "Gee, you know we don't have any pay requirements anymore because there is no cable system anymore and since there is no cable system anymore, we

aren't required to match the cable system." So, consequently I'm hoping that won't be case, but its certainly not out of the realm of possibility.

Question: How much has the Alliance for Community Media getting so far?

Jeffrey Hops: We were actually very much able to get - what the Alliance going after its very particularized interest - were able to get what we wanted into the Telecom Bill more or less due to the skills of our chief lobbyist, who could not be with us this evening. The reason we're doing this is because we have some very serious concerns that go beyond our organization's interest to the whole idea of the First Amendment. The First Amendment doesn't only belong to the owners of the conduit, it belongs to everyone. It belongs to the people in this audience as much it belongs to the stockholders of Bell Atlantic. And so consequently their speech rights and access rights that we seeing going even beyond PEG.

Question: If OVS becomes nothing more than a cable operator, what's the difference?

Jeffrey Hops: I am at best sanguine probably pessimistic, skeptical, doubtful that OVS be an open platform, and that's sort of where I am coming from, pure and simple. When you look at comparing the non-discriminatory access to platform structure of the Section 302 of the '96 Act, i.e. the OVS statute to Section 612 of the Cable Act, the leased access, there is currently much more statutory protection in leased access than there is in the OVS statute. Consequently, a great deal depends on Meredith and the Commission to.... By the way, to answer the question, Rep. Boucher of Virginia is sort of considered the primary father of OVS. Rick Boucher. We actually had some discussions with him before the law came out, and he is very much ideologically committed to the idea of the

open platform. The fact that the law doesn't actually require an open platform is, I would like think, due more to the intercession of the other members than due to Mr. Boucher himself, who I think was very much on the right track.

I just want to make a quick response to the question you asked. If in fact OVS does not become an open platform, and an OVS operator becomes nothing more than a cable operator, then what's the difference? The difference is that it becomes a cable operator without a whole slew of statutory protections and regulations that now apply to cable. One can argue about how meaningful those protections and regulations are, but there is a material difference, which is if OVS doesn't work as intended, what you got is essentially an unregulated cable operator competing against a regulated cable operator. So you got the problem first of all, that you've tilted the playing field. Secondly, you got the problem that if you believe those provisions are meaningful, they won't apply. What you finally have because, and this is a point which hasn't been raised, in the long run it's very likely that cable operators will get into OVS. In any case because of the way the statute is worded and the LEC can become an OVS platform operator. So even if the Commission regulates now that a cable operator can not become a platform operator, all a cable operator has to do, as many have indeed contemplated doing, is start their own phone company. What the trigger is will vary from state to state of course. But once they start their own phone company, then they are a LEC and then they can become an OVS operator and as Mr. Squadron mentioned with half the regulations of normal cable.

Eli Noam: Our next panelist is Karen Stevenson, who is the General Counsel of Tele-TV. She will

explain what Tele-TV is, a company formed by several LECs.

Karen Stevenson: That's right. Tele-TV is a partnership that was formed a little over a year ago by Bell Atlantic, NYNEX, and Pacific Telesis to create an integrated television service. But there are several things we're not. We're not, for example, a network operator; we don't own any platforms ourselves. And we're not, at least at this point in our development, a programmer. But the notion was that those three companies could do together more efficiently what each of them was in the process of doing separately in order to roll out their own video offerings in their own territories. So there were two operating divisions that were formed. One we call Tele-TV Media, which basically is in charge of branding the service and developing the market strategy for the service in connection with the video service organizations of the partner companies. As well as going out and licensing both linear programming and developing special kinds of packages for near video-on-demand offerings including sports, movies, etc.

We have another division called Tele-TV Systems, and the function there is to develop the end-to-end video systems, again in conjunction with our partners' organizations. We, for example, recently awarded a contract for the development of a million set-top boxes for the MMDS systems that the partners are going to begin deploying at the end of this year and into the next year. I don't know if Mr. Hops made everybody on the panel angry, but I think he probably would have surprised certain Senators with his comments that the FCC shouldn't feel that it has a mandate to make OVS a reality in our world today. Because I think that if you read the Conference report, the Senate and the House were both very interested in creating a viable competitor to the existing video platforms and to encourage a new technology. So I think that the FCC does have a mandate to achieve those

goals that are set forth in connection with the new Section 653. But what I want to talk about, is a little bit of a divergence from what we've been talking about, though there is some overlap. And that is if you assume for the moment that the FCC creates an OVS system of regulations that encourages everyone who wants to become an OVS operator and encourages people to come on those platforms as program providers, then you set that aside for the minute. I'd like to talk a little bit about the reality of that, and give you some sense of the experiences we've been having as we've gone out on behalf of our partners into the marketplace trying to obtain programming for the new MMDS systems. I think this is important because if we don't have access to programming there isn't really going to be much incentive for the partners to develop these new systems. If they are not going to be able to put on programming that's competitive, and the current program access rules are, as one of the gentleman in the audience noted, are relatively limited in that they address basically satellite delivered programming by vertically integrated cable operators. And in our experience as we go around trying to get access to key broadcast programming and key programming services that are provided either not by satellite or not by vertically integrated programmers, we've encountered some very significant problems. And I, unlike Mr. Urban can't say that they don't affect any of the people in this room, but I will not name any names. I think that you need to understand that in order to have a viable, competitive service you have to be able to offer certain things. So, for example, you have got to be able to offer the major networks. Because 64% of all cable viewing is broadcast networks. 50% of the networks and in deference to Bill Squadron, I'll just say 50% of the viewing in America today is on the older networks. I shouldn't say the major networks, but you know what I'm talking about. And if you add into that equation Fox and UPN you get over 60%. So you can see you really have to provide a service that has broadcast on it. You can see we wouldn't do a very good job

marketing a service if we couldn't offer people the ability to see the World Series or the Olympics or the kinds of special events that are only shown, the Academy Awards or something like that are only shown on the networks. And yet we have found that requests are being made of us that we believe are inconsistent with the kinds of requirements that have been imposed traditionally on cable systems as they seek retransmission consent from these major broadcasters. And just to give you a feel for the kinds of things,--now I'm not saying that we agreed with this but I'm just saying at the outset these are things that have been requested. For example, past premiums per subscriber of up to 100% more than what cable has to pay on a monthly basis. And a request that we set aside immediately up to half a dozen or more channels on the system for programming services to be provided in the future of an unspecified nature. You have to contrast this to the request that's being made historically of cable systems where they will agree that in the future they will set aside one additional channel for a new service as it gets rolled out. So that's a nonmonetary demand but it's significant because it requires us to set aside capacity. Other things have been such requests as participating in joint ventures that are unrelated to the nature of focus of Tele-TV and the partners, and also sometimes some dilatory tactics in responding to our requests. So we're in a position where and we've been in to see Ms. Jones on this question, and I think the Cable Bureau has taken the position at least to this point that while we are raising some issues that may be of concern, it is certainly more than they can handle within the timeframe that has been set aside by Congress. Even if they wished to take up these matters in the OVS proceedings, and I have to say, that there is a disagreement whether or not it would be appropriate. But, the other issues that we've run into have to do with non-vertically integrated programming where we've seen the imposition of new entrant surcharges, or the attempt to impose those or technology surcharges. And again, I don't want to

name names, but if there are certain services that you can't get, then you can't really offer a viable competitive package. And I think what we are saying is we are not interested in having preferential treatment. And in fact someone was talking about is there such a thing as good discrimination or fair discrimination, and I think you see that in the program access rules. You've seen that there is a principal basis upon which to discriminate in pricing, for example. And we know that it'll be a long time before we are as big as TCI and can therefore command the same kinds of discounts. But at the same time, I think what we are looking for is an opportunity to try to compete fairly. And we can end up with a very beautifully drafted set of regulations for OVS, but unless new entrants can get access to key programming, you are really not going to have real competition in delivering platforms.

Question: I understand that you want to be able to get network programming because you are broadcasting. But I wonder how you plan to meet this specific local community programming needs as?

Karen Stevenson: Well right now the must carry rules still apply to us and so networks' broadcast programs, as long as those stand, they would be imposed on all US operators as well. And we would propose that we think it would be a good alternative to share those with the other providers on the system who would also have to make those programs available. We think that would be an efficient use of the bandwidth - to be able to share that.

Question: I wanted to highlight what you were saying to the OVS regulation. Do I understand your

suggestions to be that even though your partners have taken a position in the OVS proceeding that market forces should determine what a just and reasonable rate is for access to an OVS system - that market forces shouldn't determine what the charges should be for your agreements with the programmers to get access on your system?

Karen Stevenson: No, I don't think that's what I am saying. We're not saying that a particular price should be dictated. We're saying that those people, the networks and the non-vertically integrated companies, should come to the table and should negotiate with us. We don't expect to get the same prices as established entities, and I think you see that when the program access rules are put into place. I think Mr. Price said earlier there is this tension between deregulation and creating a level playing field. And in 1992 there was some recognition that you're not going to get real competition in the cable markets unless you create these rules and put up some basic parameters. So we're willing to take our chances at the negotiating table. We're just having problems getting people to the table, and as I said, without those key services I don't think you're going to see a program offering on OVS, in the near future.

Monroe Price: It certainly reminds me of 1970 when the cable business argued that any competitive efforts were basically using programming to sell the person computer and technology. And yet the compulsory license, the avoidance of copyright or distance carriage as a mechanism to break that and allow a programming opposed to technology. I'm wonder what's like that here, for example, if you're going to have free over-the-air broadcasting with certain kinds of protections, should one of the duties of it be to help to develop new computer technology?

Karen Stevenson: I take that as a rhetorical question

Question: I don't understand why you want to carry that other program and still be the public access but argue to a fair pay on certain percent of the cost of producing that program. The cable companies are already doing that to franchise these . . .so are you. I assume that you also support public access to the Net.

Karen Stevenson: I think that's a question for my parent over here. I mean I really can't answer that question for the platform.

Question: But, when we say that the statute in the 1996 Act imposes the paying requirements on the OVS carrier that includes the burdens of PEG, it's not just the carriage. The argument I think that people are having is what that burden should be. Some people say, as Jeff alluded to, that you have an interconnection, and if it's a public access channel you split it. Other people are arguing that the OVS operator has to make a matching financial commitment so that essentially the amount available for PEG access doubles, but that's mostly the kind of argument. I haven't heard anybody really argue that there's no PEG obligation.

Karen Stevenson: I think we've said that we would carry that same level of programming that is currently carried by the incumbent cable system. We do not think we should have to take on the obligation of studios and things that are not part of the PEG obligations and are not in the franchise fee. So perhaps drawing distinctions that we have seen the PEG access as the programming and we

would carry that level of programming.

Bill Squadron: If I can respond to that with all due respect. Needless to say that the joint commentators, the RBOC commentators make some good comments. Their comments--we do not see eye to eye on this particular one. Where our interpretation of section 653c1b is that the statute requires an exact match and consequently we have gone into the Commission with a proposal which we call match and negotiate, and match and negotiate is that assuming for the sake of our unit that you do have an overbuild which again is to my mind really a gigantic open question. So assuming that you do have an overbuild, that the entrant into OVS system can either pick up the terms of the current requirements under the franchise agreement with the cable operator without having to say a word to the franchise authority- or if they don't like it which we expect they won't, then they can contact the franchise authority and/or the cable operator and work out either a different bilateral or trilateral agreement.

Eli Noam: Thank you. Next we have Mark Apfelbaum who is the Senior Vice President of Time Warner Cable.

Mark Apfelbaum: I was interested with the question that was raised by a few people of where did OVS come from. I think there is some argument that it's kind of an example of the tail wagging the dog--that VDT was a way of the Commission allowing telephone companies into the video business when they were prohibited by the '84 Act from getting in, and in some ways I think OVS is kind of a remnant of something that was created to deal with that problem and whether or not it will be real

I'm not sure. But the point I wanted to emphasize is that whether or not a telco comes in through OVS or through a franchise, one of the main points we made in our comments to the FCC was that we think the original problem that Congress had in mind in the '84 Act when they had the ban against telcos being in the cable business is that they can come in and just take over everything. So that problem didn't go away just because now they've done away with the statutory ban. I think in the statute and in the rule-making that everyone has been aware that there are still major concerns with allowing telcos into the cable business. And another whole side of the issue which I think is a kind of a new concern that didn't even exist in the '84 Act is that cable operators, and in particular, Time Warner is making a very serious effort to get into the telephone business which is sort of the other side of the coin of what we've been talking about here. And in our experience the telcos--and I won't name names either since that has been the policy so far--but the telcos have been less than receptive to our entry into their business. And I think there is a real danger which the Commission really does need to address which is not to allow telcos to use OVS as a quick and easy end run into the cable business, while at the same time telephone companies are keeping cable operators out of their business. And I do think one of the major concerns is, as John mentioned, the cross subsidization problem. And there is another proceeding that the FCC has started to look into separately, which is a very necessary thing. But I think without firm cost allocation rules it will be very easy and from everything we've seen thus far is something telephone companies will do which is to try to subsidize their entry into the cable business through rate payers of telephone operators. Jeffrey Hops said that we'd all be angry at him by the end of his remarks. I guess the one thing he said that I'd like to respond to is his point about who owns the First Amendment. And he said it's not the owner of the conduit. We've never seen ourselves as a conduit. We've seen ourselves and the

Supreme Court has recognized us as a full-fledged First Amendment entity, and I think the First Amendment, from the beginning of when it was written, didn't say that the First Amendment belongs to the government; it says it does belong to the publisher, and I guess I think that's why maybe your organization is called a "so-called" public interest organization because I think that *was* the very idea of the First Amendment was really to keep the government out of private editorial decisions, and I think that's really what's in the public interest, is that it should work that way.

Question: Why would a cable company be interested in OVS?

Mark Apfelbaum: Well, first of all, Meredith alluded to some of the problems that you have in dealing with so many regulating bodies as a cable operator. We are the sixth largest; there are a number of cable operators larger than us; and we deal with over 700 separate franchising authorities, then states and also federal governments. So there's, I think, some interest in a framework that has less regulation. And secondly, our company is one that's based on being interested in being an editorial provider. At the same time, we feel that for us to compete in the future, we will have to maximize the utilization of our conduit, and the possibility that a common carrier facility will excite the interest of other programmers and allow us to maximize that facility is something that intrigues us. So that's where our interest in OVS comes from. But it's something that I would say is somewhat speculative from that standpoint.

Jeffrey Hops: Our comments stated that OVS stands a possibility of being "cable-light", and the light comes from the fact that about half the Title VI regulation, just as I mentioned, goes out the window. Traditionally, the cable companies have had a less than cooperative relationship with

franchise authorities, there's a strong feeling of that, and the fact that cable operators don't want to have to deal with franchise authorities anymore, and OVS is a way out of that.

Meredith Jones: But it's a way out that was legislated into existence by Congress. I mean, it represents Congressional and the Executive view that there should be a system that has less regulation, in order, ultimately, to encourage the formation of additional delivery platforms, and the capacity to have more and different kinds of programming on the system. So, I feel like Mr. Hops is arguing something that he probably argued last summer, and way up until the 8th of February, but from my standpoint, the die has been cast on this, and to try to re-impose on OVS all of the requirements of Title VI, I think, is misplaced interpretation of Congressional intent.

Eli Noam: Bill Squadron is--one reason why he's last is that as a friend he will forgive me. The other one is also that he has these two hats from his career. First, he's here as not a cable and not a telco company, but he was also the NATOA's president of local regulators of cable television. So he brings also the municipal perspective in it...

William Squadron: Thanks Eli, and I realize that all of you are probably tired and eager to get out, so I guess, unlike everyone else, I will name names: Wake up. No, I just want to offer a few comments, particularly harp back to the very beginning when Eli said, "Is this a realistic option?" I think we need a little bit of a reality check with respect to open video systems. I would start off by saying that Tom Landry said something about "we come to pay our respects to video dialtone here." I think he should've paraphrased Mr. Shakespeare and said we've come to bury video dialtone and not to praise it. And it should have been buried and along with it, any children, siblings, or offshoots, which we now have in the form of open video systems. This is not a good idea. It did pop up very

late in the legislative process. The concept, as Professor Noam described it, is, in fact, a hybrid concept, where you have the provider of the system being both the provider of programming and supposedly the purveyor of unaffiliated programmers through a non-discriminatory platform. This really doesn't work, and it doesn't work because inherent in that concept is that if you control the conduit, and *some* of your programming, in fact, a good portion of it goes over that conduit, you have every incentive possible *not* to treat other programmers over that conduit fairly. And there's nothing *wrong* with that; I mean it's not invidious in some way. It's just not a system that will work. One can look at leased access, which was originally the concept that Congress tried to have as its common carriage or unaffiliated programming relief, and it's never worked. And the Commission is now trying to craft the leased access regulations to make them work. But, in fact, it's somewhat of a doomed process to begin with. Eli also mentioned at the beginning that he has a thesis which is that we're moving toward some sort of private contract rather than common carriage system overall, and I would say that I'm not sure I subscribe to that, but I don't think you can mix the two. I don't think there's anything wrong with the notion of common carriage video, if in fact it had any kind of economic or marketplace reality. But one of the reasons that video dialtone never actually delivered programming except in a rare case like Dover Township where somebody made it an example to do something, is that it really doesn't have any relationship to the real provision of television programming in people's homes. We don't watch television as a matter of common carriage. And the reason that video dialtone was adopted to begin with, is, just as we heard a minute ago, it was done as essentially a lever to wedge open the door against the 1984 Act which kept the telephone companies out of cable. Everyone saw that the only likely competitor, before DBS really began to take off, to cable, was the telephone companies; they were the only ones with

the deep enough pockets and sufficient infrastructure already in the ground to do it, but the Commission had its hands tied, and they came up with a very clever vehicle which was video dialtone. And it didn't really have marketplace connotation, but it had enough of a momentum that it helped to push Congress to open the door. But it never would have been a real system, in real cities around the country. Now, the problem with using something like switched-digital as the stalking force for why you don't have to worry about discrimination against unaffiliated providers because switched-digital is right around the corner, and once you have switched-digital, you've got among it a capacity and then you don't have to worry about it - but switched-digital is not right around the corner. And you don't want to craft rules for a marketplace today which is principally, in fact not principally - almost overwhelmingly an analog system with very finite channel capacity for switched-digital that maybe ten years from now will be in a third of the communities in this country. We'll probably get there someday but it's way off in the future, and if you think back five years to when fiber to the home was being played very heavily in Washington as the reason to open up all kinds of regulations because before you knew it we'd all have fiber optics plugged into our toasters, our televisions, our lights and everything. Well I mean it's never going to happen. It shouldn't happen, but it was being trumpeted as being right around the corner and not that expensive and of the US. So you have to be very careful when you're crafting regulations to deal with what's real as opposed to what may emerge many many years down the road. Finally with the hat on that, the other rationale for open video systems and for video dialtone has often been this notion that there are 33,000 franchise authorities around the country and just like Johnny Applebell, somebody's going to go door to door from 33,000 city halls, and sometime in the year 2043 when they get to last one, then they can put the switch on, and they can start service. And that's not the issue, but this

number has kind of paraded around the halls of Washington and caught a lot of attention. With really very little justification, the cable industry has managed to get franchised to deal with localities, but have an interest because not every world community is the same as every big city in the South, in the North, in the East, in the West and in every suburb. There are local interests that should be addressed. Cable industry managed to get franchised, and the last time I looked, the cable industry was doing pretty well. The telephone companies, the last time I looked, were in every locality in the country, and you'd be hard pressed to find a telephone company who didn't know their local city council, their local board supervisors, their local elected officials. For them to get franchisers, Ameritech is doing with very little difficulty in the Mid-west--right now is not a huge hardship. So to sum up, the commission is carrying out the law now, and they have to implement open video systems, but they need to bear in mind that if what you want to do is have a competitive playing field that's essentially equal, you have to really look at the rules and look at the flexibility that you've got and make sure that you're not tilting it too far one way or the other. I think it's great that the telephone companies are coming into video. We need competition in the world of video. We need more distribution systems, but there mechanisms for them to come in and do it on the same terms as everybody else and it's not that difficult. So I think we're going to look with great anticipation at this horrendous timetable you have, Meredith, and the way that you craft regulations that will allow everybody to be treated fairly. Thanks.

Thank you Bill.

Question: Who's going to pay for entry into OVS?

Answer: I know we don't think we're going to be asking rate payers to subsidize the entry into video on the federal level, and almost all our states were under price caps, which is to say we aren't going to be raising rates, and this is being funded out of the shareholders' money. And then we hope it's going to make money on its own. That's the idea.

Question: It seems to me listening to the panel, in some ways OVS is being used as the way to have ... position in the city. It's like video's outcome it seems to be a way in which the reality of OVS is not as important as its bargaining aspects in terms of sort of triangulating between Congress, the Commission, and the city.

Answer: I don't think it's unreasonable parameters and our company does this frequently to take the position if there's too much regulation in the world of communication, if there's too much regulation across the board, and to look for opportunities where the public interest can be served by less regulation. And it's certainly understandable why the telephone companies or anyone else would look for a mechanism to enter a new market with reduced regulation. But I do think that one has to understand it for what it is, and make sure that whatever interests do require continued protection from regulation or whatever interests you do feel need to be addressed at local level, don't get lost. And I think that the one exception in terms of an open system that has worked is PEG. It hasn't worked as well as it should for a variety of reasons. But in requiring certain channel capacity to be made available for things like school board elections or local bulletin boards, you have at least had some ability to use a very valuable asset for public purpose, but it's because there was a firm requirement that this be done.

Jeffrey Hops: We proposed to the Commission that whether there's a nomenclature change or an an OVS system spontaneously springs up - that either if there's a nomenclature change they could just adopt the existing requirements for all time, or in the case where there was simply no video proprietor which frankly is so infinitesimally small it hardly merits discussion. But in that case, to negotiate with the franchise authority even though it's not forbidden by statute, so it's something the FCC could regulate.

Answer: I think one of the issues that's going to face every cable operator is level playing field issues not only with OVS but also with, for example, wireless, wireless cable, and others. I think there are going to be a lot of discussions with local franchising authorities and with PEG access groups, if other competitors are able to come in and provide comparable services without those regulatory requirements.

Answer: But before people get the feeling that OVS is some kind of quick way to kind of slide out from under regulations, OVS from our perspective is interesting but there's a lot of soft ground there. One of the things about the regulatory framework that we have is we know it; we understand it; we operate under it. OVS does not have that kind of framework. So from the standpoint of implementing a business plan there's a lot of uncertainty from a regulatory standpoint, and that gives you some discomfort.

Answer: Actually, I would agree with that part of it which is now what I think is where we sort of started, which is nobody really knows yet what this is going to look like and we'll make the decision

as to whether we do it after we have a better sense.

Question: Cable operators at this end seem have been arguing that the monopoly ground between telephone is thin. But obviously cable operators are moving into Internetting, and that sort of thing. For \$99, the . . . operator can turn your Internet connection into a telephone connection, so obviously what's happening ... cable systems are already doing that. They are overlooking all the boundaries. Are you crying a little bit too much over here?

Answer: I don't think anybody would say that the Internet which isn't generally provided over our systems is a real alternative to our local phone service. The thing that we're trying to get into is build a total facilities-based network to compete with local phone companies, and to do that, one of the main things you need to be able to interconnect with the existing phone company. And that's one of the areas where we encounter great difficulty. It's also one of the things that the '96 Act addresses and hopefully will improve.

Answer: If there's an overall policy goal to create an environment where there's competition, if the cable operator and the telephone company aren't allowed to get into each other's business at the same time or near about the same time, then I think there'll be a failure in achieving that policy goal. So I think that was just a general statement.

Answer: Well I think that if the rules effectively allow any entity to act just as a cable operator acts today with effective control over the conduit and to be subjected to reduced regulatory requirements

in doing so, then I think that there is a natural inclination for people to do it. So I mean, I think it really depends on whether or not the rules really achieve the trade-off that it's supposed to achieve which is, is this truly an open platform in exchange for reduced regulation? If it's effectively a closed platform for reduced regulation, sure people'll do it.

Answer: I would agree that if OVS is just created as an end-run for cable, then a lot of people will choose it. If it does do what it's supposed to do, I would think that most people who are making the significant investment that is required to really provide cable services, that most would find it more attractive to go out and deal with all those 33,000 franchise authorities- which as Bill said is not necessarily easy but is not as daunting as that number sounds. I think we have about 10,000.

Answer: Well my whole thing is access to content. As I said, assuming you have a beautifully designed, very deregulated system, if you don't have access to critical programming, you're not going to have a product. So I'd like to see that area of things loosen up a little bit for real new entrants, and then I think you'll have some real competition.

Answer: I'm actually in agreement with most accounted for so far, that in particular with a Squadron. I'm not sure it's going to completely be . . . but you're certainly going to have a correlated relationship between the amount of editorial control which the OVS operator can exercise, and the likelihood that they will actually implement it if you have complete editorial control. If there's complete editorial control, people go in. If it's really regulated in such a way that most, if not all, OVS operators are relegated to the one-third that the statute provides, I would be willing about that.

It's a deadletter.

Answer: I would just add that OVS could be an alternative regulatory structure if OVS is going to fulfill the requirement that there is nondiscriminatory access. I think it really is dependent on increased channel capacity either through switch technology or through substantial compression technology that reduces contention to get on the platform.

Leslie Vial: I would say that we're perfectly prepared to live with the editorial control of just a third of the system. We're not prepared to live with the kind of regulatory regime we lived with under video dialtone. If the rules are not video dialtone II, then yes, we will do this.

Meredith Jones: I don't know whether they'll come but the Commission has a real interest in having new entrants in the marketplace, and having competition, and most of all, the Commission sees OVS entrants as competition. On the other hand, they are all well aware of the fact that there is balance and cable; The cable alternative is available to new entrants, as well as to OVS, and if OVS isn't somehow different then I don't think we've done our job.

Monne Price: Well in preparing for today I was trying to think of alternative definitions of OVS, and after tonight's panel I think it's an overly vaunted scenario.

Eli Noam: Let me ask you to join me in thanking our panel, and we also thank Lisa Domonkos, our Assistant Director for organizing this event, but in particular Tom Landry who put this all together.

Alex Wolfson who is our Associate Director for running the whole show. Steve Messer is going to say something just for a minute about how you can get in touch with our new Web page, and then we are going to retire. Steve?

Steve Messer: I won't hold you up too long. The Virtual Institute of Information has a flyer outside that has the address on it if anyone didn't get it. The address is www.ctr.columbia.edu/vii. It's not only a research institute; it's also a place where we can continue this discussion outside of the conference area. I hope all will join in and at least look at the site and please give us some feedback. Thank you.