

Before the
STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE
PUBLIC SERVICE COMMISSION
Albany, New York 12223-1359

Files / J. Grow / S. Shave / C. Hume
G. Dalton

10/30/98

-----X
In the Matter of
TIME WARNER CABLE OF NEW
YORK CITY, a division of Time Warner
Entertainment Company, L.P.

98-V-1253
through
98-V-1259

Application for Approval of Franchise
Renewal Pursuant to New York Public
Service Law, Art. 11, § 222 and
9 NYCRR 591.5
-----X

SUPPLEMENTAL SUBMISSION IN OPPOSITION TO APPLICATION

to the 10/20/98 submission

Emery Celli Brinckerhoff & Abady LLP
545 Madison Avenue, 3 Floor
New York, New York 10022
212-763-5000

Before the
STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE
PUBLIC SERVICE COMMISSION
Albany, New York 12223-1359

ORIGINAL

-----X
In the Matter of
TIME WARNER CABLE OF NEW
YORK CITY, a division of Time Warner
Entertainment Company, L.P.

Application for Approval of Franchise
Renewal Pursuant to New York Public
Service Law, Art. 11, § 222 and
9 NYCRR 591.5
-----X

TO: The Commission

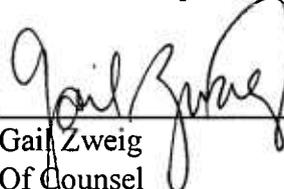
SUPPLEMENTAL SUBMISSION IN OPPOSITION TO APPLICATION

NEW YORK CITY COUNCIL

75 Park Place, 5th Floor
New York, New York 10007

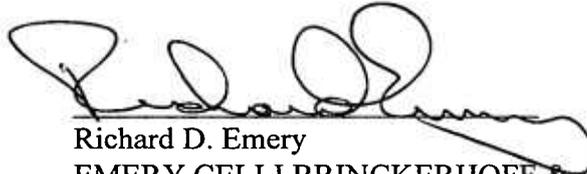
Dated: October 30, 1998

In accordance with 9 N.Y.C.R.R. § 590.11, I, Gail Zweig, have read the foregoing and to the best of my knowledge, information, and belief, the facts asserted herein are true and correct and this pleading has not been interposed for purposes of delay.



Gail Zweig
Of Counsel
New York City Council
75 Park Place, 5th Floor
New York, New York 10007
(212) 788-7001

In accordance with 9 N.Y.C.R.R. § 590.11, I, Richard D. Emery, have read the foregoing and to the best of my knowledge, information, and belief, the facts asserted herein are true and correct and this pleading has not been interposed for purposes of delay.



Richard D. Emery
EMERY CELLI BRINCKERHOFF & ABADY
545 Madison Avenue, 3rd Floor
New York, NY 10022
(212) 763-5000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPREME COURT OF THE STATE OF NEW YORK

NEW YORK COUNTY: CIVIL TERM: PART 2

-----X

THE COUNCIL OF THE CITY OF NEW YORK,

Plaintiff,

Index No.
403341/98

- against -

RUDOLPH W. GIULIANI, MAYOR OF THE CITY OF NEW YORK
and CHAIR OF THE FRANCHISE AND CONCESSION REVIEW
COMMITTEE; THE FRANCHISE AND CONCESSION REVIEW
COMMITTEE OF THE CITY OF NEW YORK; THE DEPARTMENT
OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS;
ALLEN DOBRIN, COMMISSIONER OF THE DEPARTMENT OF
INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS,

Defendants.

-----X

80 Centre Street
New York, New York 10007
October 16, 1998

B E F O R E: HONORABLE LOUIS YORK, J.S.C.

A P P E A R A N C E S :

EMERY, CELLI, BRINCKERHOFF & ABADY, ESQS.
Attorneys for Plaintiff
545 Madison Avenue
New York, New York 10022
BY: RICHARD EMERY, ESQ., and
TERESA L. SCOTT, ESQ.

NEW YORK CITY LAW DEPARTMENT
Office of the Corporation Counsel
100 Church Street
New York, New York 10007
BY: LEWIS S. FINKELMAN, ESQ.,
Deputy Chief, Commercial and
Real Estate Litigation Division

A p p e a r a n c e s :

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PAUL, WEISS, RIFKIND, WHARTON & GARRISON, ESQS.
Attorneys for Time-Warner
1285 Avenue of the Americas
New York, New York 10019
BY: ALLAN J. ARFFA, ESQ.

GRAUBARD, MOLLEN & MILLER, ESQS.
Attorneys for Cablevision
600 Third Avenue
New York, New York 10016
BY: GARY S. MAYERSON, ESQ.

MICHAEL MANISTER
OFFICIAL COURT REPORTER

1 - Proceedings -

2 THE COURT: Before we start, I have
3 a couple of preliminary questions.

4 Have all the parties in the amended
5 complaint been served? Are they all
6 here or is somebody missing?

7 MR. EMERY: I think everybody is
8 here.

9 MR. ARFFA: I'm not sure if the
10 P.S.C. is here.

11 MR. MAYERSON: Your Honor, Gary
12 Mayerson appearing on behalf of
13 Cablevision.

14 I don't think there is a problem.

15 THE COURT: We won't hold you in
16 default.

17 MR. FINKELMAN: I think the
18 plaintiff is not seeking injunctive
19 relief. I think their papers make that
20 clear.

21 THE COURT: Is that right?

22 MR. EMERY: Yes.

23 THE COURT: Why are they a party
24 then?

25 MR. EMERY: Well, we made them a

- Proceedings -

1
2 party because they are the final --
3 according to the way this thing was
4 structured in the Appellate Division, it
5 came out of the Appellate Division after
6 your Honor ruled, they were -- the city
7 made it clear that they were the final
8 body which would approve the contract,
9 and that no contract would be in effect
10 without P.S.C.'s approval, and
11 therefore, we thought it safer to name
12 them. Although the preliminary
13 injunction does not seek any relief
14 against them. I was going to argue to
15 you and I might as well just begin in
16 that regard unless you have other
17 questions you want to pose.

18 THE COURT: Just one more that I
19 think I'm really touching on, and that
20 is what is the extent of Judge Wallach's
21 order?

22 MR. EMERY: I'm going to touch on
23 that right away in what I intend to
24 present to you, and just interrupt me if
25 I'm not answering that question.

1 - Proceedings -

2 It strikes me, and maybe counsel
3 would want to react to this even before
4 I complete my argument overall, but it
5 strikes me that though this is a
6 preliminary injunction before you, as a
7 practical matter, this is the case on
8 the merits. And I say that --

9 THE COURT: That raises another
10 question. Should I treat it that way?

11 MR. EMERY: Yes, I think you should
12 treat it that way for the following
13 reason, and maybe other people have a
14 different point of view, but let me just
15 give you my thoughts on that.

16 I think you should treat it that
17 way because the question before you is a
18 narrow question of law and it has to do
19 with the issue of whether the New York
20 City Council is the legislative body of
21 the City of New York, or for purposes of
22 cable franchise renewal, or whether the
23 F.C.R.C. is. That's the question in
24 this. The question before the P.S.C.,
25 the question before other bodies is

- Proceedings -

1
2 whether the public interest is served by
3 the new amended resolution that has now
4 been vetoed but presumably will be
5 overridden within a month or so, and
6 which will be the resolution applicable
7 to future cable franchising renewals at
8 least, and hopefully applicable here if
9 the P.S.C. agrees with us. That's a
10 public interest determination that has a
11 lot to do with expertise in the cable
12 business and cable franchising
13 operations. That has nothing to do with
14 the decision before you as a practical
15 matter.

16 The decision before you is whether
17 the administration, the executive branch
18 of the City of New York, in granting
19 cable franchise renewal, can read the
20 city council out of the process
21 entirely, which they have plainly
22 attempted to do for the last three
23 years. And the history of that is very
24 clear. They sought a waiver from the
25 P.S.C. which they withdrew when they

Michael Manister
Official Court Reporter

- Proceedings -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

didn't get it. Last spring at the hearings they avoided all the questions and ultimately said we are not cooperating with the city council because we view them as the legislative body. And then Corporation Counsel, Mr. Hess, wouldn't answer the inquiries of Mr. Weinberg until the end of the summer. And then they went ahead with the F.C.R.C. vote. And now, in fact, we believe this is in blatant violation of Justice Wallach's T.R.O., not only yours, but Justice Wallach's T.R.O. They went and registered the contracts with the comptroller which is clearly not permitted, in my view, by the T.R.O. The only thing that was permitted was to sign them, pay and go to the P.S.C. There was no registration. Registration, if not consummation, is very close to consummation of the contracts.

My point is -- and that's more important to you not as a matter of

Michael Manister
Official Court Reporter

- Proceedings -

1
2 contempt or anything like that. That's
3 not really the issue here. But it is
4 more important to you because it is
5 plainly and clearly instructive of the
6 fact, unequivocal fact, that what the
7 city is trying to do, what the executive
8 branch is trying to do is circumvent the
9 legislative body.

10 Now, if they are right on the law,
11 they have every right to do it. If they
12 are right that the F.C.R.C. is the body
13 for purposes of the franchise renewal,
14 then they have the right to do it; if
15 they are wrong, they don't. That's the
16 issue before you. There is no other
17 real issue here. It is a preliminary
18 injunction in name, but it is ultimately
19 the merits of this case. And when you
20 decide that issue, it will essentially
21 be decided finally and go up on appeal.
22 That's what the city has been asking in
23 this case when we were before Justice
24 Wallach. That was their whole pitch.
25 That's how they got it modified. They

- Proceedings -

1
2 said we need a ruling on the merits.
3 And the only way we get a ruling on the
4 merits is if this thing goes forward.
5 If you restrain it, we will never get a
6 ruling on the merits. Justice Wallach
7 was convinced on that argument and
8 that's why he amended it.

9 THE COURT: I just can't understand
10 it. It doesn't register with me.

11 MR. EMERY: I argued against that.
12 It doesn't register with me either. But
13 the reality is, that was the position
14 the city took.

15 THE COURT: Why wouldn't there be a
16 ruling on the merits if my restraints
17 were enforced?

18 MR. EMERY: You can ask them that
19 question better than I.

20 THE COURT: Judge Wallach is a very
21 bright man and I respect him immensely.

22 MR. FINKELMAN: Your Honor, I take
23 exception to the characterization of
24 what transpired.

25 MR. EMERY: Why don't you wait

- Proceedings -

1
2 until I finish.

3 MR. FINKELMAN: You invited me to
4 interrupt.

5 THE COURT: One at a time,
6 Gentlemen. Let's be civil.

7 MR. EMERY: My point is, I think
8 what Lenny Kerner's position was, and he
9 argued this with Mr. Finkelman in front
10 of Justice Wallach, was that if the
11 T.R.O. is not amended, then the whole
12 process could go forward in such a way
13 that the amended resolution, which the
14 city council passed, could ultimately be
15 the authorizing resolution in effect at
16 the time these contracts came before
17 consummation, and the old resolution
18 would have expired and they wouldn't
19 have the authority to go forward and
20 there would be no more case before you,
21 it would be moot. And that's why they
22 were trying to rush to get you to do it
23 earlier and that's why they were
24 trying -- that was Kerner's point of
25 view.

1 - Proceedings -

2 Regardless of whether he is right
3 or wrong, at this juncture, the fact of
4 the matter is that their position is
5 that they want a ruling, they wanted a
6 ruling. That's why I don't understand
7 the arguments before you about remedies
8 and exhaustion, which all are complete
9 nonsense in my view, because the reality
10 that goes to the question of the
11 P.S.C.'s expertise in whether cable
12 franchises under amended resolution with
13 public interest ramifications is
14 desirable. I agree with that. On that
15 issue, the P.S.C. is expert and they
16 should be allowed --

17 THE COURT: Aren't you arguing that
18 P.S.C. regulation controls any
19 inconsistent regulations or local
20 ordinances of the city? And doesn't the
21 P.S.C. say that the legislative body is
22 the one, the legislative body has to be
23 involved in the process to the extent of
24 approving it?

25 MR. EMERY: Absolutely right.

- Proceedings -

That's the merits of this case.

THE COURT: Why don't we let -- why aren't we letting the P.S.C. decide this issue?

MR. EMERY: Very simply. The P.S.C. has said very clearly that it is the organic documents of the city's executive legislative structure, namely, the charter. They said that themselves in the letter. They said they are not competent to rule on the issue. It is an issue that is a pure matter of law. Has nothing to do with exhaustion of remedies. It is a pure matter of law for the courts of New York to decide.

THE COURT: They have referred it to the courts of New York? Let's look at the letter. That's one of the things I haven't done.

MR. EMERY: Look at the letter of September 16.

THE COURT: This is in --

MR. EMERY: From Malone to Hess. It is Exhibit I.

- Proceedings -

1
2 THE COURT: In your amended
3 complaint?

4 MR. EMERY: Exhibit I to the Teresa
5 Scott affirmation.

6 THE COURT: Whose side is she on?

7 MR. EMERY: She is sitting right
8 here with me.

9 THE COURT: Where is Teresa Scott?
10 You seem to be very close.

11 MR. EMERY: I haven't known her as
12 a saboteur yet.

13 THE COURT: Let me see if I can
14 find it.

15 MR. EMERY: You want me to hand it
16 to you, your Honor?

17 THE COURT: Yes. That will make it
18 easier.

19 MR. EMERY: It is in the first
20 paragraph towards the end.

21 THE COURT: "Confirmation of
22 franchises, Section 222, relative to
23 renewals, assigns the Commissioner
24 responsibility to specify the branch of
25 the municipal government and power to

- Proceedings -

1
2 grant cable television franchises".

3 So what are they going to do about
4 it?

5 MR. EMERY: And the sentence before
6 that, your Honor.

7 THE COURT: "To grant franchises."
8 You are not arguing that the council,
9 city council is granting a franchise.
10 Your argument is that they are approving
11 it.

12 MR. EMERY: We are arguing that
13 they have a role in approval of the
14 franchise that is being circumvented.

15 THE COURT: Number one, the general
16 counsel to the department of public
17 service, while what he says has
18 considerable weight, is not a final
19 decision of the Public Service
20 Commission.

21 MR. EMERY: Your Honor,
22 Mr. Finkelman on behalf of the city has
23 conceded in his reply affidavit, in two
24 places, that it is the organic documents
25 of the city, namely, the charter, which

- Proceedings -

1
2 is the legislative body that controls.
3 It is on Page 7 of his affidavit. His
4 reply affirmation -- excuse me --
5 paragraph 12. "It is hardly possible
6 that framers of the rule intended no
7 specific body in any particular
8 locality, but under organic documents of
9 the locality was vested with the
10 approval of functions. Thus, there is
11 no sound reason to excuse plaintiffs
12 from proceeding." Then he argues
13 administrative process.

14 The point here is, it's not -- it
15 is a pure matter of law for a Court to
16 decide. You see ultimately, the city's
17 gambit here --

18 THE COURT: Wait a minute, wait a
19 minute. You say it is a pure matter of
20 law. It is a regulation of the Public
21 Service Commission, so why are they not
22 at least in the first instance allowed
23 to state, and if it is brought before
24 them, if you intervene in the
25 proceedings, you can get them to do

- Proceedings -

1
2 that, how they will determine who is,
3 which is or what is the legislative body
4 of the city?

5 MR. EMERY: They said they will do
6 it through the organic documents of the
7 city.

8 The point here is that they are
9 trying to go to Albany to have this
10 reviewed, because an Article 78 of the
11 P.S.C. is reviewable in Albany Supreme
12 Court, which, of course, is a totally
13 absurd position when this Court has been
14 handling this case from the wheel at the
15 outset when it was assigned. And the
16 idea here that this is anything other
17 than a pure matter of law under the
18 charter of the City of New York, the
19 issue of whether the P.S.C. is going to
20 waive the rule or do something else is a
21 different issue. That can take place
22 after you decide whether or not the city
23 council is the local legislative body.
24 If you decide that it is, then they
25 might be petitioned to waive the rule or

- Proceedings -

1
2 something. That's a different issue.

3 THE COURT: What you are saying
4 now, I should issue a declaratory
5 judgment and hold off on the
6 injunction?

7 MR. EMERY: No. You should rule on
8 the merits of this case, it will go up
9 on appeal and be decided.

10 THE COURT: That would be a
11 declaration of the party's rights.
12 Should I order the P.S.C. not to
13 consider what the city is advancing in
14 its organic documents?

15 MR. EMERY: I don't think you have
16 to order the P.S.C. I think your ruling
17 as a matter of law is binding. It is a
18 judgment and it goes up on appeal,
19 either be affirmed or reversed, and then
20 the P.S.C. can act accordingly. But the
21 point is you have an irreparable harm
22 here. That's why we sought preliminary
23 injunction, because the city council of
24 the City of New York is being read out
25 of a process which we contend and it

- Proceedings -

1
2 contends, and as you ruled, is likely to
3 succeed on the merits in the T.R.O.
4 context, that it was read out of a
5 process which is under the charter
6 entitled To Participate In. That is
7 irreparable harm in itself.

8 THE COURT: I don't mean to imply
9 that I disagree with anything I have
10 said on my temporary restraining order.
11 But I do have certain reservations as a
12 procedural matter of telling a
13 regulatory commission what to do before
14 they do it. I'm not certain, even with
15 your very persuasive argument, that they
16 are going to do it exactly as you say
17 they are going to do it. Because I
18 don't think the general counsel is the
19 final word here. Now, it may be. Maybe
20 they will follow him to the letter of
21 the law, but it seems to me we don't
22 know that right now.

23 MR. EMERY: Let me put it slightly
24 differently. The one thing the law and
25 the cases that we have cited to you

- Proceedings -

1
2 stand for is that an administrative
3 agency, without a specific expertise in
4 an area that it is being asked to opine
5 on, does not have authority to do so in
6 place of a Court that can look at the
7 same question. The P.S.C. has no
8 specific or specialized authority in the
9 issue of what is a legislative body of a
10 locality. You do. That's what courts
11 are for.

12 THE COURT: But they have -- they
13 are supposed to have the authority to
14 implement the rules that they have
15 promulgated, whether you say they have
16 the expertise or not, at least in the
17 first instance. And it seems to me that
18 unless their interpretation of their own
19 rules, arbitrary or capricious, or can
20 show in some way is an excess of their
21 jurisdiction, that we at least in the
22 first instance have to give some weight
23 to their opinion because it is their
24 rule.

25 MR. EMERY: Well, the rule is that

- Proceedings -

1
2 the legislative body should participate
3 in the renewal process in X, Y and Z
4 ways. The rule is not definition of --

5 THE COURT: Don't I have to see
6 what they are going to say before I tell
7 them what to do?

8 MR. EMERY: They have no expertise
9 in the area. What they have to say is
10 of no moment because it is a question of
11 law on the issue of what is a
12 legislative body. It is inappropriate
13 for them, just as their general counsel
14 says, to opine on that issue. The
15 questions of how the executive branch
16 and legislature relate to one another
17 are peculiarly appropriate for you, for
18 a court. It is exactly what this Court
19 is meant to do in a quasi constitutional
20 separation of powers at the city level.
21 This is done repeatedly. The Mayor has
22 had repeated cases with the council,
23 with the public advocate, with everyone
24 else who has gone to court. Courts are
25 opining on these issues right and left.

- Proceedings -

1
2 That is their particular expertise. The
3 Public Service Commission knows about
4 electric rates. They don't know what a
5 legislative body of the City of New York
6 is. They don't know what the F.C.R.C.
7 is.

8 THE COURT: Let me ask a different
9 but related question. Before we decide
10 who may prevail on the merits or whether
11 I decide the merits or I issue an
12 injunction or I do anything of that
13 sort, the first question is, is there an
14 adequate remedy of law, right? You look
15 at me as if I'm from Mars, but I think
16 that's a legitimate question.

17 MR. EMERY: I don't think damages
18 are appropriate here or what the remedy
19 at law would be.

20 THE COURT: Isn't an Article 78
21 proceeding a remedy that the law gives?

22 MR. EMERY: I think not in this
23 context.

24 THE COURT: Why would you be
25 injured if I were not to rule on this

- Proceedings -

1
2 issue until the Public Service
3 Commission ruled and then you could
4 bring an Article 78 challenging their
5 decision?

6 MR. EMERY: First of all, the
7 Article 78 would have to be brought in
8 Albany.

9 THE COURT: It would?

10 MR. EMERY: That's the venue
11 provision. I'm sure they will argue
12 that. They will come back and avail
13 themselves of every technicality.

14 THE COURT: I would love to
15 determine the Article 78, to tell you
16 the truth. I have no desire to
17 relinquish because I'm so far into this
18 case, I really have no desire to
19 relinquish my jurisdiction over it.

20 MR. EMERY: They can agree to it.

21 THE COURT: But what legal right do
22 I have to say that I'm not going to --
23 I'm going to rule on this issue, because
24 if I don't, it is going to go to those
25 judges in Albany?

- Proceedings -

1
2 MR. EMERY: Right. The point is,
3 the essence of the harm done here, which
4 an Article 78 has no remedy at law to
5 redress, is that the city council
6 processes have been denied and deprived
7 already as we sit here today. That's
8 the harm. It's not more or less. It's
9 simple. And that no remedy at law is
10 available to redress, not anything that
11 comes out of the P.S.C., not by the
12 P.S.C., nothing else. It is only a
13 court now that can correct this as
14 quickly as possible to give the city
15 council -- I mean we're talking about
16 the legislative body of the City of New
17 York for every other purpose, at least.
18 They have to concede that. The question
19 is, is it for this purpose. And if it
20 is for this purpose, the people of the
21 City of New York and the body itself has
22 been grievously harmed by this kind of
23 circumvention of its power. It is
24 essential -- if this were Congress and
25 the presidency or something of that

Michael Manister
Official Court Reporter

- Proceedings -

1
2 nature, maybe the courts would decline,
3 maybe it wouldn't. But the fact of the
4 matter is, it would be a peculiarly
5 appropriate question for the courts if
6 judicial intervention were allowed. And
7 there are different considerations and
8 constitutional issues between the
9 branches, but not in the state law.

10 THE COURT: Here's my next
11 question. Suppose you are right and
12 suppose the city council's procedures,
13 the city council's powers, the city
14 council's jurisdiction has been violated
15 and the Public Service Commission goes
16 ahead, nevertheless, and approves these
17 contracts, then you bring an Article
18 78. And suppose I decide that you are
19 right, that the city council's
20 procedures have been violated, that they
21 do have a right to participate in this
22 proceeding, and I've said that the
23 Public Service Commission is in
24 violation of its own regulations; that
25 its own regulations say that the

- Proceedings -

1
2 legislative body of the local
3 jurisdiction has to have a say in this,
4 and I therefore -- either I send it back
5 to the Public Service Commission to make
6 a decision in light of that or I just
7 say the whole proceeding is a violation
8 of law and you have to start -- well,
9 you don't have to start all over again,
10 but before you have this proceeding
11 before the Public Service Commission,
12 it's got to go before the city council
13 for its approval and for the city
14 council to exercise whatever other
15 things it can do, such as modifying it
16 or whatever.

17 Now, hasn't the processes that have
18 been violated have the jurisdictional
19 avoidance, that the city council has
20 been deprived of, hasn't that been
21 remedied if it follows that line?

22 MR. EMERY: It has been remedied a
23 year and a half later than it should be
24 remedied now.

25 THE COURT: I have already read all

- Proceedings -

1
2 the briefs.

3 MR. EMERY: My point is this, your
4 Honor. The fact that it can be remedied
5 then in that process as you describe
6 does not take away from the city
7 council's right to get a remedy now
8 because the harm is complete at this
9 moment. It has nothing to do with the
10 fact that the Public Service Commission
11 can possibly fix it or that you can fix
12 it down the road after they do. The
13 harm has occurred now on a very narrow
14 legal question which you have particular
15 expertise to resolve. And that's all
16 that's necessary. We don't need any of
17 the rest of it to give us the right to
18 come to you as a legislative body of the
19 city. It is not just some litigant out
20 there. This is a legislative body of
21 the city, and seek denial under the
22 processes under the charter guaranteed
23 to it and guaranteed to the people who
24 elected the body. And that's the
25 problem here. This is tampering with

- Proceedings -

1
2 separation of powers. This is not just
3 a case that contemplates the expertise
4 of some administrative agency to grant
5 redress. This is a case about sharing
6 of power in city government. And courts
7 decide those as quickly and efficiently
8 as possible so that the processes of
9 government can go forward. They don't
10 send them over to administrative bodies
11 to have the city council be dealt with
12 about an administrative body when the
13 court itself has complete jurisdiction
14 over the wrong that already is
15 complete. That's the essence of the
16 point here. I mean I wish I could put
17 it more clearly, but I can't think of a
18 way.

19 THE COURT: I feel somewhat like
20 Judge Braun when he sent back the Yankee
21 Stadium case to the Bronx court a couple
22 of weeks ago when he felt that he wanted
23 to get into those issues, but some
24 procedural aspects of the case which I'm
25 not going to go into prevented him from

- Proceedings -

1
2 doing so, and I find that I may be in
3 the same boat.

4 Let me hear from the city.

5 MR. EMERY: Thank you, your Honor.

6 MR. FINKELMAN: Yes, your Honor.

7 You made a lot of points I was
8 prepared to make. But I think before
9 your Honor even gets to the notion that
10 a judge reviewing what the P.S.C. does,
11 what can't be lost sight of here, they
12 are not harmed until the P.S.C. rules,
13 makes its determination. And that
14 determination, we hope it is not, could
15 very well be that they agree with the
16 council. And the P.S.C. will not
17 approve these renewals and send it back
18 to the city and say until such time as
19 you get city council approval, we are
20 not going to approve them.

21 THE COURT: That's one thing they
22 can do. But as it was just pointed out,
23 it is probably not going to happen in
24 view of the general counsel's letter.

25 MR. FINKELMAN: I don't think the

1 - Proceedings -

2 general counsel speaks on behalf of the
3 members of the P.S.C.

4 THE COURT: We all know they are
5 going to confide in them and we all know
6 he is going to have a large part in
7 writing the decision.

8 MR. FINKELMAN: That may be, your
9 Honor.

10 I might also add that they have in
11 fact filed their objections with the
12 P.S.C., I think on October 14. So they
13 have now availed themselves of that
14 administrative process.

15 In terms of this whole notion about
16 it being an issue of law that may be
17 beyond the purview of the P.S.C., you've
18 got the Public Service Law, explicitly
19 states that the P.S.C. must look at
20 whether the renewals are in violation of
21 the law and the public interest. They
22 have every right to look at the issue of
23 whether or not the city has, as they
24 allege, run roughshod over the city
25 council's approval rights. And to

- Proceedings -

1
2 suggest that they don't have the
3 authority to look at these legal
4 issues --

5 THE COURT: Let me ask you one
6 question about Judge Wallach's
7 decision. Judge Wallach's decision,
8 after he modified the T.R.O., said that
9 in all other respects, the T.R.O. is in
10 place. What are the other respects?

11 MR. FINKELMAN: That's a good
12 question, your Honor. And it is not for
13 me to ask Judge Wallach at this point,
14 but I don't think there are any --

15 THE COURT: Let me ask Mr. Emery
16 that. I meant to ask him that.

17 MR. FINKELMAN: I think he has made
18 clear that his position is city
19 comptroller registration is something
20 that we were still enjoined from doing
21 at the present time until you modify the
22 T.R.O.

23 THE COURT: Is that it?

24 MR. EMERY: That is certainly one
25 of the things. I mean consummation,

- Proceedings -

1
2 finishing the contracts is what he was
3 saying can't occur. And moreover, he is
4 also, I would argue, saying that the
5 P.S.C. can't approve the contract, it
6 can issue an opinion, but it can't
7 formally approve the contract until the
8 T.R.O. is lifted.

9 MR. FINKELMAN: The P.S.C. was not
10 even a party when we went before Judge
11 Wallach. He didn't enjoin the P.S.C.
12 from doing anything. It was the city
13 defendants that were being enjoined.

14 THE COURT: I'm going to let you
15 reply, because I don't want to have
16 cross-conversations.

17 MR. FINKELMAN: And with respect to
18 registration, Judge Wallach permitted
19 execution and delivery of the contracts
20 so they can be filed with the P.S.C.
21 The comptroller's registration, it is
22 not a consummation of the contracts, it
23 is not a finalization of the contracts.
24 The contracts are not effective until
25 the P.S.C. approves them. And that's

- Proceedings -

1
2 not going to happen. So the
3 comptroller's registration --

4 THE COURT: Why is it not going to
5 happen?

6 MR. FINKELMAN: It hasn't happened
7 yet. But at the time Judge Wallach
8 issued the order, that's not something
9 that was even with the P.S.C. at the
10 time. The registration is part and
11 parcel of execution of the delivery. It
12 is also not finalization and/or
13 consummation, so we haven't even run
14 afoul of the T.R.O., whatever remains of
15 it.

16 THE COURT: Well, consummation at
17 this point is when the Public Service
18 Commission approves the contracts.

19 MR. FINKELMAN: That's correct,
20 your Honor.

21 THE COURT: Is there a hearing?

22 MR. FINKELMAN: They haven't
23 scheduled any hearing. I think they
24 just got counsel's objections on the
25 14th. I don't know what the next plan

- Proceedings -

1
2 is.

3 THE COURT: Is there procedure that
4 they ordinarily would schedule a
5 hearing, do you know?

6 MR. FINKELMAN: It is at their
7 discretion. They have the option to
8 hold a hearing. It is probably likely,
9 given the objections, that they will do
10 so. I can't speak on their behalf, your
11 Honor, but nothing has been scheduled
12 yet. They just got the objections. I
13 assume they want the city's response to
14 it. I think that's going to proceed
15 unless something happens.

16 But I just think that the notion
17 here, and as I said, I reiterate, that
18 state law specifically gives the P.S.C.
19 this right to look at whether or not
20 these renewals violate the law. And
21 with respect to the notion that we are
22 admitting that you have to go to the
23 organic documents to resolve this, you
24 don't get there until you go to the
25 P.S.C. regulation. That is the

- Proceedings -

1
2 provision that provides the local
3 legislative body. It is their
4 regulation. If there's ever a case
5 where an administrative body should be
6 called upon to interpret its own
7 regulation, this is it. It is their
8 regulation that has created this
9 dispute.

10 I would also add, and I think we
11 cited several cases, I think your Honor
12 picked up in the argument, they had
13 adequate remedy of law here. The fact
14 of the matter is, if everything goes and
15 the P.S.C. approves the agreements,
16 they've got their remedy, they've got an
17 Article 78, your Honor, or a judge in
18 the Third Department certainly has the
19 authority to nullify contracts if they
20 are in violation of the law, send them
21 back to the P.S.C., whatever remedy a
22 judge would fashion, so they have a
23 remedy of law.

24 And I might also add this whole
25 notion about the city council has sort

- Proceedings -

1
2 of been left out of this entire
3 process. We didn't start the process
4 until the city council issues this
5 authorizing resolution. If your Honor
6 has read the authorizing resolution, it
7 goes for six or seven pages. It has 30
8 comprehensive terms and conditions that
9 have to be in these contracts.

10 THE COURT: This is what they are
11 trying to avoid, right?

12 MR. FINKELMAN: Excuse me, your
13 Honor?

14 THE COURT: This is what you are
15 trying to avoid.

16 MR. FINKELMAN: No, we are trying
17 to avoid modifications they made on the
18 last day before the F.C.R.C. was going
19 to vote. But before that time, in 1993,
20 they offered an authorization, and they
21 specified 30 terms and conditions. We
22 followed that to a T. And then on the
23 last day before the F.C.R.C. is
24 scheduled to vote, 15 members of the
25 committee decide we are not going to

- Proceedings -

1
2 change the ground rules, which, of
3 course, is not effective at the time
4 because it has to go to full council,
5 has to survive the Mayor's objections.
6 It is not even effective today. And
7 they tried to stop the process so they
8 can try and change the ground rules.

9 THE COURT: What about Mr. Emery's
10 argument what we are involved in here is
11 a pure question of law? We have the
12 Public Service Commission's regulation
13 which has the force of law in New York
14 City, I think we will all agree. And we
15 have a charter. Both of them indicate
16 that the city council is the
17 legislative -- not the Public Service
18 Commission ruling, but certainly the
19 city charter says that the Public
20 Service Commission is the -- I'm sorry,
21 that the city council is the legislative
22 body.

23 And as a matter of fact, if I went
24 to the average guy in the street who has
25 some knowledge, just some minimum

1 - Proceedings -

2 knowledge of what goes on in this city
3 and I asked him what is the local
4 legislative body for the city, I'm sure
5 nine out of 10 times the answer would be
6 the city council.

7 Now, if that's the case, if that is
8 what is in the charter, if that is what
9 the Public Service Commission is bound
10 to adhere to, and that is the general
11 knowledge of the populous, then why
12 can't the Court know what the man in the
13 street knows? In other words, why can't
14 I take judicial notice of the fact that
15 it should be the city council? Because
16 there's no argument against it, and this
17 shouldn't be an issue before the Public
18 Service Commission because it is so
19 apparent, and anything other than that
20 would be an abuse of discretion.

21 MR. FINKELMAN: Well, in response,
22 the average citizen probably is not
23 familiar with Section 21 of the city
24 charter which says that the council --

25 THE COURT: No, he is familiar with

1 - Proceedings -

2 the city council.

3 MR. FINKELMAN: That's true, your
4 Honor.

5 THE COURT: And he knows the city
6 council passes the statutes of general
7 application.

8 MR. FINKELMAN: Well, this is not a
9 statute; these are contracts. Let's not
10 lose sight of that, which is typically
11 an administration function.

12 THE COURT: What is the authorizing
13 resolution?

14 MR. FINKELMAN: Under the charter
15 is something that the council gives the
16 right to a particular city agency to
17 pursue issuing franchise renewals. But
18 the charter Section 21 states the
19 council is the legislative body.

20 THE COURT: We are getting away
21 from the man in the street.

22 MR. FINKELMAN: That's what I was
23 going to say. The man in the street
24 doesn't know that the charter says the
25 city council is the legislative body

- Proceedings -

1
2 unless the charter specifies otherwise.
3 And in this case, we have a specific
4 charter section that the council shall
5 have no role whatsoever in the selection
6 of franchisees.

7 But putting that aside -- well,
8 selection --

9 THE COURT: Well, who is selecting
10 here?

11 MR. FINKELMAN: Who is selecting?

12 THE COURT: Who is selecting the
13 franchisee? Who is picking Time-Warner,
14 who is responsible for bringing
15 Time-Warner in this whole situation?

16 MR. FINKELMAN: That's a loaded
17 question. But under the Federal Cable
18 Act --

19 THE COURT: Don't say that to a
20 judge.

21 MR. FINKELMAN: Sorry, Judge.

22 Under the Federal Cable Act,
23 Time-Warner and Cablevision, as existing
24 franchisees, have a statutory right to
25 renewal as long as they meet certain

- Proceedings -

1
2 terms and conditions under the cable
3 act.

4 But I don't want to stray. The
5 issue here is, what you have here is
6 unlike most other cases involving this
7 pure issue of law, you've got a statute
8 that indicates the P.S.C. is statutorily
9 authorized, it has to review whether or
10 not the agreements comply with the law.
11 That is their statutory directive. And
12 under the P.S.C. regulation, they are
13 the ones who issued this regulation that
14 has started this whole conflict. So
15 this is also a case where the agency
16 should be called upon to look at their
17 own regulation before any judge does.

18 You've got a Court of Appeals, the
19 Joy case, which stands for the
20 proposition that when a particular
21 agency's regulation has been called into
22 question, that that agency should have
23 the first crack at interpreting it
24 before any Court gets embroiled in that
25 dispute. There's no reason in terms of

1 - Proceedings -

2 harm or anything why there should be any
3 exception. They are a litigant. I
4 understand the city council is typically
5 the city's legislative body. But they
6 are a litigant. And they have to play
7 by the same rules. And right applies
8 and exhaustion applies. And there you
9 have it.

10 THE COURT: Before Mr. Emery
11 replies, is there anyone else, any other
12 attorney at the table who wishes to
13 speak?

14 MR. ARFFA: Judge, may I be heard?
15 I'm here for the Time-Warner
16 franchisees.

17 We support essentially the position
18 that the city is taking here, the city
19 in the form of the Mayor and Corporation
20 Counsel are taking in this matter and in
21 opposition to the city council
22 position.

23 I just want to briefly state, we
24 are clearly caught in the middle of a
25 dispute between these two bodies. But

Michael Manister
Official Court Reporter

- Proceedings -

1
2 what seems absolutely clear to us, there
3 is a statutory scheme that has been put
4 in place by the state legislature for
5 the review and approval of cable
6 franchises. There is also federal
7 statute involved as well. But under the
8 state scheme, it is clear you go through
9 a local process and then agreements are
10 reached which are then submitted to the
11 P.S.C. That's what's happened here.
12 The only issue being raised as I hear
13 Mr. Emery, although he is very eloquent
14 and he puts it in terms of separation of
15 powers and role of the council, at the
16 end of the day, the only issue he is
17 raising, the issue he is asking to
18 decide is, what is the meaning of the
19 state Public Service Commission
20 regulation, and has it been satisfied in
21 this case. That is a question that is
22 within, uniquely within the province of
23 the P.S.C.

24 Moreover, there is one other factor
25 he did not mention, that Mr. Finkelman

Michael Manister
Official Court Reporter

1 - Proceedings -

2 mentioned in a reply affidavit that I
3 think is important to be aware of.

4 The P.S.C., like many
5 administrative bodies, expressly has the
6 power to waive their own regulations.
7 Tomorrow, the P.S.C. could say you know,
8 what that whole rule we had, I'm going
9 to waive it in this case because you
10 know there's been enough involvement by
11 public authorities, by the public, there
12 have been enough public hearings. In
13 our view, the purposes of the regulation
14 have been fully carried out here, and
15 therefore, we are going to waive it.
16 I'm not saying that they will.

17 THE COURT: Where does that
18 authority to waive the regulations come
19 from?

20 MR. ARFFA: They have another
21 regulation which Mr. Finkelman cited in
22 his own reply affidavit. I think it
23 is --

24 MR. FINKELMAN: Your Honor, if I
25 may, it is NYCRR Section 590.22. And

- Proceedings -

1
2 also Section 591.1, gives the P.S.C. the
3 explicit authority to waive any rule or
4 to approve renewals notwithstanding the
5 fact that there's noncompliance with all
6 the provisions of the NYCRR.

7 THE COURT: Does anyone know if any
8 courts have issued any decisions on that
9 rule? Because it seems to me it
10 involves a very serious question about
11 substantive due process, procedural due
12 process. Or it seems to me it could be
13 construed in the context of a particular
14 situation it is fundamentally unfair.

15 MR. ARFFA: Let me say first why I
16 don't think it is, and then I will
17 answer your question.

18 I don't think it would be
19 fundamentally unfair, because it is
20 obviously an issue for the P.S.C. to
21 decide what was the purpose of the
22 rule. I expect the purpose was to
23 assure certain degree of public
24 involvement, public hearings and the
25 like. And second, it certainly would be

- Proceedings -

1
2 a rational decision to say that was
3 satisfied in this case.

4 THE COURT: It just seems to me
5 that you pull the rug right out from
6 under everybody if you wait to the end
7 when everybody is arguing on certain
8 rules and they appeal to the rules upon
9 which a case will be decided and then
10 you say, well, we are not going to
11 enforce this rule, so you lose.

12 MR. ARFFA: Judge, I think the --

13 THE COURT: Anyway, that's not an
14 issue here.

15 MR. ARFFA: The reason I say --

16 THE COURT: This is all a dicta
17 type of conversation.

18 MR. ARFFA: It is. But to make the
19 point, the P.S.C., like regulatories,
20 has a great deal of discretion on how to
21 act. They may say it is in the public
22 interest to do X even if it is not
23 required by law. They can go far beyond
24 it.

25 Now to just answer your first

- Proceedings -

1
2 question, Judge, the leading authority
3 on the powers of the P.S.C. is actually
4 a case that does involve the city. It
5 involved a case where some of our
6 franchises were modified and they were
7 challenged by the city, sued the P.S.C.,
8 that is New York City didn't like what
9 the P.S.C. has done. And there is a
10 Court of Appeals decision, City of New
11 York versus Commission on Cable
12 Television -- that was the predecessors
13 of the P.S.C. -- 47 NY2d 89. The Court
14 of Appeals said that the C.C.T., now the
15 P.S.C., "Is invested with broad
16 authority" and "has been granted
17 extensive power to supervise the
18 franchising of cable television
19 systems".

20 So let me add it is a very broad
21 authority that has been recognized by
22 the courts, and they can take the
23 position that they are fully satisfied
24 with what's happened here.

25 So let me just continue with the

- Proceedings -

1
2 P.S.C. by saying I think there is broad
3 authority on the part of the P.S.C. I
4 don't see a reason for the Court to get
5 involved at this stage where a P.S.C.,
6 where the matter is before the P.S.C.,
7 hasn't acted and does have the
8 jurisdiction to decide what did that
9 rule mean, what did they mean when they
10 said local legislative body.

11 I spent last night looking at
12 something because I just wasn't sure
13 whether or not it would apply, but
14 Mr. Emery gets up and makes it sound
15 clear-cut and your Honor referred to the
16 people on the street and say well, this
17 is a nonissue. Of course, the
18 legislative branch is the city council.

19 I looked last night at Mr. Emery's
20 papers when he managed to get the Board
21 of Estimate declared unconstitutional.
22 One of his arguments over and over again
23 was that the Board of Estimate, in doing
24 the things it did, which is what the
25 F.C.R.C. does, was exercising

Michael Manister
Official Court Reporter

- Proceedings -

1
2 legislative power over and over again.
3 In his papers he argued that they were
4 legislative. So to me, to come in and
5 say --

6 THE COURT: That's one of the
7 reasons why they did away with it.

8 MR. ARFFA: Exactly. And it was
9 its powers, those same powers that he
10 referred to as legislative are now being
11 held by this F.C.R.C. So to say this is
12 a clear issue of law, I don't think I
13 would agree with. I think there is a
14 lot of logic to what the Corporation
15 Counsel is arguing, which is to say no,
16 the authorities here can be viewed here
17 as legislative.

18 One final point. And this was
19 something Mr. Finkelman said, and I'm
20 not sure if it fully sunk in. The point
21 is here.

22 There was an authorizing
23 resolution. Even if you said, Judge,
24 said I don't like what they did and they
25 weren't nice enough to the city council

- Proceedings -

1
2 and all of this, and even if you think
3 the P.S.C. rule says the legislative
4 body is the city council, which it
5 doesn't say, but even if your Honor felt
6 that way, the city council acted here.
7 They passed an authorizing resolution.
8 That authorizing resolution they concede
9 in their own papers, the city council
10 empowered, they used that word over and
11 over again, empowered to do it, that's a
12 city agency, with the F.C.R.C. approval
13 to grant franchises. So they granted
14 this authority. As I argue in our
15 papers, in effect, they delegated this
16 authority that was given to them and
17 there's no reason they can't delegate
18 that authority. That's a well-settled
19 doctrine that if the city council had
20 that authority, they enacted an
21 authorizing resolution and clearly
22 empowered it. If we were sitting here
23 because there was not a new authorizing
24 resolution because they weren't trying
25 to amend it and we just had the old one,

Michael Manister
Official Court Reporter

- Proceedings -

1
2 F.C.R.C. voted, they approved it, this
3 thing went into effect and a citizen
4 came up and said hold it, I don't think
5 there has been compliance with city and
6 state law here because the legislative
7 branch wasn't involved, I think they
8 would have been laughed out of court.
9 They would say hold it, there is an
10 authorizing resolution and empowered
11 these groups to act.

12 The only issue the city council is
13 raising --

14 THE COURT: I don't know if the
15 city council can waive the requirements
16 of the city charter just by issuing an
17 authorizing resolution.

18 MR. ARFFA: That is consistent with
19 the city charter. The city council
20 enacted an authorizing resolution that
21 empowered these groups to act.
22 Therefore, I think it is a very strong
23 argument to say that whatever power they
24 had under the P.S.C. rule was in turn
25 delegated to these other bodies.

- Proceedings -

1
2 THE COURT: Well, number one, there
3 are other considerations; who is the
4 authority, who is the ultimate authority
5 for the resolution. This is similar to
6 what I have said about the Public
7 Service Commission, who is the ultimate
8 authority for interpreting or stating
9 what the intention of the resolution
10 was. I would say that it is the body or
11 at least the sponsors of the resolution
12 itself.

13 Number two, the other issue is that
14 the Public Service Commission has issued
15 a regulation that says that the
16 legislative body is the one to approve
17 this transaction. And I don't know that
18 the city council would have the right to
19 abdicate its responsibility under state
20 law that has been enacted by a public
21 agency that has the effect of state law
22 in a local jurisdiction. So there are
23 some other considerations besides what
24 you say about they have delegated.

25 MR. ARFFA: Judge, there may be. I

- Proceedings -

1
2 think my point is just that you don't
3 need to reach these issues of who is the
4 local legislative body, nor should a
5 Court, I think, under long-settled
6 precedence where there is an
7 administrative agency whose regulation
8 is at issue, and the interpretation of
9 that regulation forms the heart of the
10 dispute, it seems to me is clearly a
11 matter of judicial deference indeed
12 under the precedence we cite, we think
13 almost require the courts defer to the
14 judgment of the administrative body.
15 And as I say, who knows what they will
16 do, who knows how they will interpret it
17 or what rules they will give, and that
18 will be reviewed. And therefore, there
19 will be review at the end of the day of
20 that action. So in my view, whatever
21 the merits may be, I think that it is a
22 matter for the P.S.C. to decide in the
23 first instance.

24 MR. MAYERSON: Your Honor, if I
25 may, we were first named in any pleading

- Proceedings -

1
2 on Friday. We just got Mr. Emery's
3 papers just now. We are still not named
4 in these papers, but we do --

5 THE COURT: You are named in the
6 complaint.

7 MR. MAYERSON: We are named in the
8 verified amended complaint from Friday,
9 but we do intend to make our own
10 separation motion to dismiss, although I
11 would say for the purposes of today, we
12 join --

13 THE COURT: Do you have anything to
14 add to what has been said to the motion
15 you are contemplating?

16 MR. MAYERSON: I think your Honor
17 hit the nail on the head.

18 THE COURT: What is that? I want
19 to know what you are going to add in the
20 motion you are going to file.

21 MR. MAYERSON: We want to review.
22 We have their papers and want to be able
23 to review them. If there are any
24 additional authorities, we would add
25 those. They are essentially the same

- Proceedings -

1
2 grounds.

3 But I think your Honor hit the nail
4 on the head. You said the question of
5 the P.S.C., don't they really have the
6 right in the first instance to interpret
7 their own regulations. And if the city
8 council is unhappy with that, whatever
9 it may be, they can take an Article 78.
10 I think you really just hit it on the
11 head. Thank you.

12 MR. EMERY: Just briefly, your
13 Honor.

14 The point ultimately is that
15 Justice Wallach, in the second T.R.O.
16 which involved the Cablevision
17 franchise, said at the end, "provided,
18 however, that nothing herein contained
19 shall limit the power of the motion or
20 to proceed expeditiously with its
21 hearing with respect to a preliminary
22 injunction." That is one of the things
23 that the T.R.O. preserved.

24 THE COURT: I'd like to note before
25 you continue -- excuse me. You

- Proceedings -

1
2 suggested or I suggested based on
3 something I deduced from what you said
4 that this could be treated as a motion
5 for summary judgment. Does anyone have
6 any problem with that?

7 MR. EMERY: They moved to dismiss.

8 MR. FINKELMAN: Yes, your Honor.
9 P.S.C. is named and hasn't even appeared
10 yet.

11 THE COURT: That's their problem if
12 they have been served.

13 MR. FINKELMAN: They were with a
14 complaint and have 20 days to move.

15 THE COURT: Don't they have an
16 obligation to appear at this motion?

17 MR. FINKELMAN: No. The motion for
18 injunctive relief does not target them.

19 THE COURT: Since there's an
20 objection, we can't treat this as a --

21 MR. EMERY: It can be converted
22 later in any event after there is an
23 opportunity for all parties to
24 participate on the issue of summary
25 judgment. I don't think that is an

- Proceedings -

1
2 impediment to your ruling. Obviously,
3 you are not going to rule as a final
4 matter on the merits if they are
5 objecting. I put it out there to see if
6 it were possible to agree on that. If
7 it isn't, it isn't.

8 But my point is, Justice Wallach
9 sent it back to this Court. And in
10 fact, the city argued it should be sent
11 back to this Court for a ruling because
12 they wanted a ruling. Now they come
13 back here, of course, and take a
14 different tack. We heard it. I don't
15 have to repeat it.

16 MR. FINKELMAN: I would object to
17 that again, your Honor.

18 MR. EMERY: It is exactly what
19 Mr. Kerner said to Justice Wallach.

20 THE COURT: I understand you are
21 moving to dismiss.

22 MR. FINKELMAN: We argued to Judge
23 Wallach it wasn't right. He agreed you
24 have to go to the P.S.C. I don't know
25 where it comes from.

- Proceedings -

1
2 MR. EMERY: It comes from Lenny
3 Kerner's mouth.

4 MR. FINKELMAN: I was there.

5 MR. EMERY: In any event, the issue
6 that was made to sound like some kind of
7 inequitable activity on the part of the
8 city council is really another world,
9 that they came in the last minute and
10 added conditions. The fact of the
11 matter is, this is the legislative body
12 of the City of New York, despite what
13 Allan says about it. And what the Board
14 of Estimate used to be or whatever, this
15 is the legislative body. The
16 legislative body has a right on the last
17 day, the last minute or the last second
18 to change the rules of the game. That's
19 what a legislative body is. It has that
20 power as long as it is not violating the
21 constitution. They just may not like
22 it. And obviously they don't because
23 they are doing everything in the world
24 to invoke every technicality to
25 circumvent it and they have for the last

- Proceedings -

1
2 three years. But the fact of the matter
3 is, that's the right of the people of
4 the City of New York when they elect the
5 city council to have a body that has
6 power to counteract the Mayor when the
7 Mayor is doing something against what
8 the city council perceives as the public
9 interest. And they can do it at the
10 last second, even with the fact that
11 there are no equitable issues that apply
12 to a city council body in the same way
13 that someone else may be held
14 accountable in that regard in your
15 courtroom or elsewhere. There is the
16 city council of the City of New York,
17 and they took these actions because they
18 believed it was in the interests of the
19 people of the City of New York and
20 that's what they are elected to do.
21 They are playing fast and loose with
22 that whole concept, just as they are
23 playing fast and loose with an injury
24 that has occurred here, which is to
25 avoid them, to circumvent them if we are

Michael Manister
Official Court Reporter

- Proceedings -

1
2 right about the P.S.C. rule which says
3 legislative body.

4 Now, let's look at that because
5 that's what everybody is arguing about,
6 what does local legislative body mean.
7 The fact of the matter is, we start with
8 the proposition, and I agree with you,
9 it is just the general counsel of the
10 P.S.C. saying it, because he is saying
11 that's not what they do, that's not what
12 they said. They decide whether it is
13 in the public interest, they decide
14 whether it is cable expertise, but they
15 don't decide what is the legislative
16 body. They just say that the
17 legislative body has to participate in
18 the ways as described in the renewal
19 process. Who decides what a legislative
20 body is, is a court as a matter of law.
21 And that's the essence of what's here.
22 That's what you have to decide.

23 Now, if the F.C.R.C. is the
24 legislative body and they are wrong and
25 they win, then the P.S.C. can go and see

- Proceedings -

1
2 if it is in the public interest to see
3 if they are approved. But if you decide
4 the city council is, then they can go
5 and decide whether they want to waive
6 the rule or whether they want to take
7 some other action. But it is still for
8 a court to decide what is a legislative
9 body. That's why the Supreme Court did
10 it in the case that Allan was saying
11 that I litigated some years ago. I mean
12 it is for a court to do it. It is not
13 for the P.S.C. to decide what the local
14 legislative body is of the City of New
15 York. It just isn't the case.

16 Now, I also say as a third
17 proposition that if you read the city's
18 papers in this, notwithstanding their
19 technical arguments about exhaustion and
20 ripeness and the like, which are all
21 based on the notion that there is no
22 harm until the contracts are signed,
23 which we say is absolutely nonsense,
24 that the harm took place last summer
25 when we were denied the right to

- Proceedings -

1
2 undertake the processes appropriate as
3 that local legislative body to
4 participate in the renewal process.
5 That's the harm. It is not the
6 consummation of the contract. That's a
7 way of dealing with a remedy, but that's
8 not the harm here. The harm is in the
9 process. And what we still say is, if
10 you look at their papers,
11 notwithstanding all their technical
12 arguments, they themselves say it is a
13 matter of law, that it is the organic
14 documents that charter the arguments
15 they are making themselves about whether
16 the charter delegates charter or whether
17 it doesn't, arguments all joined in the
18 papers as a matter of law which
19 determines whether this is a legislative
20 body for purposes of the P.S.C.
21 regulations. And that's what you have
22 to decide. It is not up to the P.S.C.

23 THE COURT: Have you concluded,
24 Gentlemen, and Ladies?

25 MR. ARFFA: Judge, just one last

- Proceedings -

1
2 thing.

3 On the letter from the P.S.C.
4 counsel, I don't think it should be
5 read, and anyone could read this, even
6 though it is just an opinion from the
7 general counsel as stating that the city
8 council, or one or the other of these is
9 the body under its rule. I think what
10 they were trying to argue is the
11 question of whether you are required to
12 get body approvals, whether you need
13 F.C.R.C. approval and the city council
14 approval. So I think the letter which I
15 suspect --

16 THE COURT: I don't follow what you
17 are saying.

18 MR. ARFFA: The way the letter is
19 written, he actually starts by saying --
20 what he's responding to is a question.
21 whether or not the city council -- you
22 take the position that the regulation
23 should not be required to read the
24 approval of city council in addition to
25 the F.C.R.C., and he goes from there. I

- Proceedings -

1
2 don't think this is being read as taking
3 a definitive interpretation of whether
4 or not. I think what Mr. Emery was
5 trying to construe the letter as, was
6 saying he's already decided the issue of
7 law, he has already decided the meaning
8 of the P.S.C. regulations, and he has
9 already said it is up to a court. I
10 just can't -- you can't get this out of
11 that letter. There is no way this
12 letter says that is for the Court to
13 decide. I think it is an initial
14 preliminary letter in any event, and it
15 is certainly not saying definitively
16 that they are going to allow the courts,
17 or I think he refers to them as organic
18 documents, to decide that issue. I
19 think the P.S.C. is still reserving for
20 itself the ability to decide the meaning
21 of its own regulation.

22 That's all the I want to say.

23 THE COURT: I'm going to issue a
24 decision today, but in order to make
25 sure that I don't make any glaring

Michael Manister
Official Court Reporter

- Proceedings -

1
2 errors in my oral rendition of my
3 decision, I'm going to do it after
4 lunch, after I have had a chance to talk
5 to my staff, such as it is, and see if
6 they agree with what I say, if they have
7 any serious disagreements, so that I can
8 check what my take is on what the ruling
9 is or what the decision should be from
10 the advice that I get from my staff. So
11 why don't we reconvene at about 2:30 and
12 I'll issue an order from the bench at
13 that time.

14 MR. FINKELMAN: Your Honor, just a
15 housekeeping chore. Can I please hand
16 up the originals of the papers that were
17 served?

18 THE COURT: You don't have to do
19 that. You can file them with the county
20 clerk.

21 MR. FINKELMAN: File it with the
22 clerk?

23 THE COURT: I have so much here,
24 I'm afraid that it will take two
25 court officers to carry it over to the

- Proceedings -

1
2 county clerk. So why don't you file it
3 there. I think that would be easier.
4 Nobody is going to challenge you on the
5 basis that I have decided it on copies.

6 MR. ARFFA: Judge, we also have the
7 cross-motions to dismiss.

8 THE COURT: I'm going to rule on
9 that.

10 (Whereupon, a luncheon recess was
11 taken.)

12 THE COURT: The question I have to
13 consider right now is what the Public
14 Service Commission is going to do when
15 they decide the issues which have been
16 brought before them.

17 Although their rule says that the
18 legislative authority has to approve the
19 contract between the city and the cable
20 owners, it appears that there is an
21 issue over whether or not the approval
22 of the legislative authority of the city
23 is the city council.

24 Plaintiff claims that the city
25 council has to participate and has to

- Proceedings -

1
2 approve these contracts. The defendant
3 cable owners and the city says that's
4 not the case, and that the approval of
5 the city agency -- what's the name of
6 that agency?

7 MR. FINKELMAN: Franchise
8 Concession Review Board.

9 THE COURT: The Franchise
10 Concession Review Board is sufficient.

11 So I have reviewed the letter from
12 the general counsel for the Public
13 Service Commission, and my impression is
14 that he believes that the approval of
15 the city council is not necessary.
16 However, the general counsel is not the
17 commission. While his voice may have
18 weight, he is not the one who makes the
19 ultimate decision. The decision by the
20 Public Service Commission will be --
21 strike that. The Public Service
22 Commission will have to determine
23 whether its rule requiring the
24 authorization or approval of the local
25 legislative body means the city

- Proceedings -

1
2 council. And that issue has not yet
3 been determined. It seems to me that
4 the issue arises because of the Public
5 Service Commission's rule.

6 Now, before the Court should
7 intervene, the Court should determine
8 what the Public Service Commission's
9 decision will be on the submission of
10 these contracts for approval without the
11 approval of the city council. The city
12 council, I know, has issued its
13 objections to the procedure and the
14 decision awaits the Public Service
15 Commission.

16 The Court feels that until the
17 Public Service Commission rules, the
18 Court is not in a position to dictate
19 who is the legislative body at this
20 time. Administrative procedures have to
21 be exhausted and a final decision of the
22 administrative agency in this case has
23 to be rendered before, I believe, the
24 Court should intervene.

25 Nothing I've said should be

- Proceedings -

1
2 construed in any way to indicate whether
3 or not I believe that the city council
4 should or should not have the approval
5 effect. I have not ruled on the
6 merits. That is still up in the air and
7 that still awaits a further decision of
8 both the Public Service Commission and
9 whoever takes an appeal on their ruling.

10 It is hereby ordered that the
11 motion for a preliminary injunction is
12 denied, and that the cross-motion to
13 dismiss is granted without prejudice to
14 any subsequent ruling by any
15 administrative agency or any court on
16 the merits of the issue of whether or
17 not the city council authorization is
18 necessary before these transactions
19 between the city and the cable companies
20 can be consummated.

21 I'll sign that order as soon as it
22 is typed up.

23 MR. EMERY: Your Honor, I would
24 just make one suggestion as to an
25 amendment with respect to the last part

Michael Manister
Official Court Reporter

- Proceedings -

1
2 of the order. And that is given what
3 Justice Wallach said and sending it back
4 to you, albeit in the context of the
5 preliminary injunction, I just would
6 make the suggestion that rather than
7 granting the motion to dismiss at this
8 time, you hold that in abeyance and
9 await the decision of the Public Service
10 Commission so the case can come back to
11 you.

12 THE COURT: Well, I've thought
13 about that. And the question is whether
14 I can turn a proceeding, a declaratory
15 judgment or preliminary injunction into
16 an Article 78 proceeding. I don't know
17 if whether I should await further
18 submissions from the parties.

19 MR. EMERY: If you can give us a
20 chance to brief that, I'm told we have
21 case law that supports you doing that.

22 THE COURT: Okay. I'll withdraw
23 that part of my decision -- well, then,
24 what am I deciding? I'm deciding that
25 the preliminary injunction is denied.

- Proceedings -

1
2 MR. EMERY: But you don't have to
3 deny the motion to dismiss.

4 THE COURT: Does anyone want to
5 speak to this before I make my
6 decision?

7 MR. FINKELMAN: Yes, your Honor.
8 I think it would be patently premature
9 to convert this to an Article 78.

10 THE COURT: I'm not converting it
11 yet, I'm considering it.

12 MR. FINKELMAN: You are
13 contemplating it because there's no
14 P.S.C. determination. You don't start a
15 lawsuit challenging a determination
16 before it is rendered.

17 MS. HURSTEIN: (Law Assistant)
18 I also wanted to ask about the
19 venue issue with respect to the Article
20 78. Is it mandatory that an appeal
21 would go to --

22 MR. EMERY: No.

23 MR. FINKELMAN: My understanding
24 from what I know of the P.S.C., is that
25 it is mandatory, that the Article 78

1 - Proceedings -

2 would have to be taken at the Third
3 Department, your Honor.

4 THE COURT: Look, I am denying the
5 preliminary injunction. I'm not ruling
6 on the request to turn this into an
7 Article 78 proceeding at this time, but
8 I'm willing to consider the suggestion.
9 All it means is that you have to give me
10 further briefs. I don't think it is
11 premature because I'm not doing anything
12 but giving you more work.

13 Two weeks. I'm going to be gone
14 next week anyway. Two weeks from
15 today. Limit it to 20 pages.

16 MR. EMERY: Briefs haven't been
17 long in this case anyway.

18 THE COURT: No, they haven't.
19 There are times that I don't do that and
20 I get 50-page briefs.

21 MR. EMERY: That's no problem.

22 THE COURT: I don't think we need
23 another appearance. I just think I need
24 your submissions.

25 MR. FINKELMAN: Simultaneously.

1 - Proceedings -

2 MR. EMERY: Simultaneous.

3 THE COURT: Simultaneous. Serving
4 and filing with the part clerk within
5 two weeks.

6 I am not going to sign the order I
7 issued. I will just issue a gray sheet
8 denying the motion for preliminary
9 injunction at this time.

10 (Whereupon, the proceedings were
11 concluded.)

12 * * *

13 C E R T I F I C A T I O N

14 CERTIFIED TO BE A TRUE AND ACCURATE
15 TRANSCRIPT OF THE ORIGINAL STENOGRAPHIC
16 MINUTES TAKEN OF THIS PROCEEDING.

17 
18 _____
19 MICHAEL MANISTER
20 OFFICIAL COURT REPORTER

21
22
23
24
25
Michael Manister
Official Court Reporter

98-V-1253

RECEIVED
PUBLIC SERVICE
COMMISSION
CCEC-FILE-CITY

1998 OCT 23 PM 2: 53

**Franchise Agreement Between
The City of New York
and
Time Warner Cable of New York City,
a division of Time Warner Entertainment Company, L.P.
(Western Brooklyn Franchise)**

**New Appendix A
Including a Complete "Engineering Analysis and System Architecture"**

APPENDIX A

SYSTEM CHARACTERISTICS AND
TECHNICAL PERFORMANCE/TESTING REQUIREMENTS

APPENDIX A

SYSTEM CHARACTERISTICS AND TECHNICAL PERFORMANCE/TESTING REQUIREMENTS

I. SYSTEM CHARACTERISTICS

A. Technical Features

1. Headend/Hub Design and Intrasystem Interconnection. The System may contain one or more headends/hubs/satellite earth stations/office/ maintenance complex(es). Each headend and hub(s) will have Downstream and Upstream capability and all equipment necessary to provide Two-way services and intrasystem and intersystem interconnection.
2. System Bandwidth and Access Connectivity. The basic plant for the System will consist of a Subscriber Network with one or more coaxial or fiber optic cables. The System shall be a fully activated Two-way network.
 - a. At the completion of the Upgrade (as defined in and in accordance with the terms, schedule and sequence as set forth in Appendix B of this Agreement), the Subscriber Network will have activated Upstream bandwidth of at least 35 MHz and total activated Downstream bandwidth of at least 800 MHz. The Company presently intends to achieve this capacity for the Subscriber Network through the use of a hybrid-fiber-coax (HFC) architecture system, providing for 5-40 MHz Upstream and 54-862 MHz Downstream.
3. Interconnection.
 - a. Within nine (9) months after request by the Commissioner, or such longer period as the Commissioner may authorize, the Company shall: (1) interconnect, with the appropriate capacity to transmit simultaneously all of the Governmental Channels via transmission paths equal in number to the number of Governmental Channels, the Governmental distribution center to the Company's head-end, and (2) interconnect, via one (1) transmission path for each Governmental production/studio facility, each Governmental production/studio facility up to a maximum of three

facilities citywide to the Governmental distribution center; and

- b. Within nine (9) months after request by the Commissioner, in consultation with the Community Access Organization (CAO), or such longer period as the Commissioner may authorize, the Company shall: (1) interconnect, via transmission paths equal in number to the number of Public Channels, the CAO distribution center to the Company's head-end, (2) interconnect, via one (1) transmission path, the primary CAO production/studio facility to the CAO distribution center, and (3) interconnect, via one (1) transmission path for each remote CAO production/studio facility, each such remote CAO production/studio facility to the CAO distribution center, except that the maximum aggregate length of the interconnections that the Company shall be required to provide shall not exceed two (2) City blocks for the Borough in which the CAO operates. These dedicated paths shall be on fiber optic cables employing wide band FM or digital transmission characteristics and providing performance quality for video and stereo audio Signals which is effectively transparent except that the technological specifications herein shall not apply to transmission paths for collocated facilities that were provided on coaxial cable as of the Effective Date of this Agreement.
 - c. Interconnection If Number of Access Channels Changes. If the number of Access Channels on the Subscriber Network changes, the Company shall interconnect such additional Channel(s) from the Access Channel distribution center(s) to the Company's head-end(s) and shall provide other interconnection(s) as required by Section 4.1.03 of this Agreement.
4. Interactive Capability. The System will be activated for Two-way capabilities and will offer Two-way interactive services as they become Economically and Technically Feasible and Viable.
 5. Emergency Alert Systems (EAS). The Company shall comply with Section 4.4.02 of this Agreement, provide appropriate connectivity for the City to transmit emergency alerts using any EAS equipment required by applicable law, and, upon request of the Commissioner, meet with representatives designated by the City to establish emergency alert plans and procedures.

6. Standby Power. Where installed, all amplifiers and power supplies related to the coaxial trunk lines of the Subscriber Network will have standby power supplies capable of at least three (3) hours of standby operations. The headend(s) and hubs will have automatic switchover engine-generated standby power, capable of powering all headend/hub electronics for a minimum of twenty-four (24) hours, except where prohibited by lease or regulation, in which case the headend(s) and hubs will be equipped with such standby power capability as is permissible and reasonably practicable. The Company shall follow the standby power provisions of the Engineering Analysis and System Architecture (EASA) plan as set forth in III of this Appendix A.
7. Status Monitoring. Where previously installed, a status monitoring system will continually and automatically monitor the performance of all amplifiers and power supplies related to the trunk lines of the Subscriber Network. The Company will monitor the status of its trunk line amplifier system to the fullest extent possible given the reporting capability of status monitoring equipment. The Company shall follow the EASA upgrade plan submitted with regard to status monitoring. Trunk lines will be replaced by fiber extending to node locations and therefore status monitoring may only be needed to monitor node activity.
8. Parental Control Options. Each Subscriber will be supplied a method for exercising parental control as provided in Section I.D. of this Appendix A.
9. Service Delivery Techniques. The Subscriber Network shall be addressable. Addressable converters or other State-of-the-Art addressable technology allowing for changes in service configurations without interruption of Service or the need to enter any Subscriber's premises will be utilized in the System and provided by the Company to any Subscriber who subscribes to any Service requiring such a device.
10. Interconnection. The System will be interconnected to other Cable Communications Systems in accordance with the terms and conditions of this Agreement. As part of the Upgrade the Company shall change the technology used for interconnection to digital transmission to reduce the degradation of audio, stereo, surround sound, and video transmissions. The completion of the change to digital interconnection transmission shall be completed by December 31, 2003.

B. Service Capability

1. Services of the Subscriber Network

a. Local and Distant Off-the-Air Signals

The System will be capable of providing local off-the-air broadcast signals.

b. Automated Services

The System will be capable of providing automated information services.

c. Public, Educational and Governmental Access Channels

The Company will provide these Channels in accordance with Section 4.1 of this Agreement.

d. Local Cultural, Local News, Local Sports, Local Children's Programming and Other Categories of Local Origination Programming

The System will have the capability to provide local origination programming.

e. Nonpay Satellite or Microwave Programming Services

The System will have the capability to provide nonpay satellite or microwave programming services.

f. Cable Programming Services

The System will have the capability to provide cable programming services.

g. Pay Services

The System will have the capability to offer pay services.

h. Leased Services

Leased Channels shall be provided in accordance with Section 3.7 of this Agreement.

i. Interactive Services

The Company will facilitate the development of interactive Services for the Subscriber Network.

j. Services for Physically Challenged Persons

The Company will comply with the obligations for Physically Challenged Persons set forth in Section 4.4.01 of this Agreement. The Company shall make available to Subscribers on Medicaid who are Physically Challenged remote control devices at a price not exceeding the Company's cost therefor.

k. Services for Senior Citizens

The Company will develop means of making its equipment easier for Senior Citizens to use. At a minimum, the Company will supply Subscribers who are Senior Citizens on Medicaid with remote control devices at a price not exceeding the Company's cost therefor.

l. Other

Nothing contained in this Appendix A or elsewhere in this Agreement shall be construed as a requirement that the Company provide any specific or broad category of programming.

2. The Institutional Network

The Institutional Network shall be established as provided in Appendix E to this Agreement.

C. Production Facilities

The Company will make available to the Community Access Organization and to the City the public, educational and governmental access facilities and equipment or capital grants specified in Appendices D and E to this Agreement.

D. Parental Control Devices

At the Subscriber's request, the Company shall provide to each Subscriber, either (i) within twenty-four (24) hours of a Subscriber's written or oral request, a parental control device, or the form of a converter with a parental control feature; or (ii) within a reasonable time after the request, a filter, trap or similar system by which the Subscriber can prohibit viewing of a particular Cable Service during periods selected by that Subscriber. The choice of (i) or (ii) shall rest with the Company.

II. PERFORMANCE AND TESTING REQUIREMENTS

A. Performance Standards

1. General

The System shall be constructed, operated, maintained and upgraded, as a State-of-the-Art Cable Communications System consistent with the obligations of Section 3 of this Agreement. The Company shall strive to attain the best possible technical performance for the System, consistent with such sound engineering practices as are Economically and Technically Feasible and Viable.

At a minimum, throughout the term of the franchise, the System shall be designed and operated so as to meet all applicable technical performance standards, regulations and guidelines.

2. Signals/Channels

For purposes of this Agreement, initially and until such time as the City and the Company otherwise agree, the spectrum capacity of each type of Channel utilized on the System shall be as follows:

- a. Analog Video Channel -- 6 MHz provided in analog form, which shall include both the visual and aural carriers and corresponding side bands that constitute the picture and sound of a television program;
- b. Audio Channel -- an FM audio Signal occupying 200 kHz of bandwidth, with 400 kHz spacing, the Signal strength of which shall not exceed that of the audio subcarrier of the nearest Video Channel nor be less than -16 dBmV at the receiver terminals (reference 0 dBmV equals 1,000 microvolts across

75 ohms) or an equivalent audio Signal utilizing an appropriate modulation technique so as to render the quality of the Signal no less than that of an FM audio Signal;

- c. Data Channel -- a band of frequencies to be determined by the interface devices used to translate the Data Signal; usually 3 kHz to 6 MHz depending upon speed of data transmission. (In some cases, the bandwidth may exceed 6 MHz.)

All Signals distributed over the System, shall conform to the performance standards set forth in II.A.3. of this Appendix A.

3. Performance Standards

The performance standards, including design and operating standards, for the System are those that have been established by the FCC and the standards contained in the Company's EASA plan as set forth in III of this Appendix A, which are contained in Exhibit 1 to this Appendix A. Prior to the provision of digital service, the technical specifications for such service shall be approved by the Commissioner, such approval not to be unreasonably withheld or delayed.

B. Testing

1. Testing Procedures

The Commissioner shall, after consultation with the Company, establish reasonable procedures for testing the technical performance of the System in accordance with all applicable technical performance standards, regulations and guidelines. Such procedures shall include both the initial proof-of-performance tests for any upgrade of the System and periodic tests of the System and shall be consistent with the testing considerations set forth in II.B.2. of this Appendix A.

2. Testing Considerations

a. General

The tests to be conducted of the technical performance of the System shall be designed to ensure compliance by the Company with all applicable performance standards. With respect to the performance standards that are set forth in Exhibit 1 to this Appendix A, the design standards shall apply to the design of the System and compliance with these standards will be evaluated in connection with the Company's EASA plan as set forth in III of this Appendix A.

The design/operating standards will be used in connection with the periodic operating tests of the System throughout the term of this Agreement, which at a minimum will occur: (i) following construction of the Upgrade (or any subsequent upgrade) of the System; (ii) semiannually, during the extremes of climate conditions (summer and winter), and (iii) at periodic intervals as established in the testing procedures based upon factors such as number or location of Subscriber complaints regarding reception problems.

The Company shall give the Commissioner prior notice of any such test to be conducted by the Company pursuant to this Section II.B.2.a of this Appendix A so that the City may arrange to have an engineer present. The failure of City personnel to attend any test shall not relieve the Company of its obligation to conduct any test. The Company shall also make available to the engineer(s) designated by the Commissioner the mobile testing facilities required by Section 6.11.04 of this Agreement to enable the City to conduct tests of the technical performance of the System. The mobile testing vehicle and equipment will be made available from time to time upon the request of the engineer(s) designated by the Commissioner; such vehicle and equipment necessary to perform all tests occasioned by Subscriber complaints shall be made available upon twenty four (24) hours' notice when such tests are required in response to Subscriber complaints;

and such vehicle together with all equipment specified by such engineer(s) from among the equipment listed in Exhibit 2 to this Appendix A shall be made available on the next business day after request by such engineer(s) for all other tests deemed necessary or appropriate by the Commissioner. All such tests at the City's request will be conducted by the Company's personnel with the City's engineer(s) present.

b. Compliance with Design Standards

In the event of the Company's failure to meet the design standards, either in connection with the Engineering Analysis and System Architecture plan as described in III of this Appendix A, or any initial proof-of-performance test (or equivalent test, as described above) in any area, the Company shall take immediate corrective action either: (i) prior to construction, in the case of a design failure; or (ii) as a condition to continued operation of the System in any area, in the case of a failure of any initial proof-of-performance test (or equivalent test, as described above).

c. Failure to Comply with Operating Standards

The Company's failure to meet the operating standards on any one occasion in connection with any test of the System will not subject the Company to any breach under this Agreement, but will obligate the Company to undertake immediate corrective action, as described below. Substantial failure to pass operating tests or repeated refusal to take corrective action in the event of such failures shall constitute a material breach of this Agreement, as provided in Section 14.4.02(ii) of this Agreement.

If the System meets the operating standards on all Channels at the time of any test, no further action by the Company will be required. If the System fails to meet one or more of the operating standards at the time of any test, the Company will immediately investigate the cause of such failure and, to the extent such cause is within the Company's control, the Company shall correct such cause within thirty (30)

days, provided that such thirty (30) day correction period shall be extended on a day-to-day basis during the period in which the Company is diligently and continuously correcting such cause to the satisfaction of the Commissioner. At the conclusion of said period, an additional test will be conducted to determine whether the corrective actions have brought the System into compliance with the operating standards.

In the event of a failure to meet the operating standards on any Channel at the time of any test, the Company will be permitted to show that such failure was due to circumstances beyond its control; for example, due to the quality of received Signals or tapes prepared by Persons other than the Company or the quality of any converter or other terminal device attached to a Subscriber's television which was not supplied by the Company or any Affiliated Person. A reasonable determination will be made by the Commissioner, in consultation with the Company, as to whether the failure to meet the operating standards on any Channel was due to circumstances beyond the Company's control, provided that, if a City engineer is present at the time of the test and such engineer determines that such failure is solely due to circumstances beyond the Company's control, no further action by the Company will be required. If the failure was due to circumstances beyond the Company's control, the Company will not be required to take further steps with respect to the failure, but may take such corrective action it deems appropriate to overcome the problem. If the failure was due to circumstances within the Company's control, the Company will correct the failure, after which an additional test will be conducted.

3. Mobile Testing Capability

In order to enable the Company to test the performance of the System to perform in accordance with Exhibit 1 to this Appendix A, the Company shall secure and continuously maintain: (i) all necessary testing and monitoring equipment specified in Exhibit 2 to this Appendix A to this Agreement, or its equivalent; (ii) any other equipment necessary to monitor the performance of the System as may be specified

by the Commissioner; and (iii) a mobile testing vehicle capable of containing and having all such equipment installed therein promptly, and which shall be used for the purpose of such tests.

C. Modifications

If requested by the City or the Company, representatives of the City and the Company will meet to consider revisions to the performance standards and testing procedures.

III. ENGINEERING ANALYSIS AND SYSTEM ARCHITECTURE (EASA)

A. Purpose

The Engineering Analysis and System Architecture (EASA) shall ensure that, as constructed and operated pursuant to the Upgrade, the System shall be able to provide the capacity and Services required by this Agreement in a manner consistent with the applicable performance standards.

B. EASA Plan

The Upgrade shall conform to the Engineering Analysis and System Architecture plan (EASA plan) pursuant to this Section III.B. of this Appendix A. The EASA plan is on file with the City as of the Effective Date of this Agreement and is attached hereto as Exhibit 3. Thereafter, subsequent additions or modifications to the EASA plan shall be submitted by the Company in such form and within such time period as the Commissioner shall specify.

The version of the EASA plan and all subsequent additions or modifications to such version, as accepted by the Commissioner, shall be set forth as Exhibit 3 to this Appendix A and shall be incorporated herein and made a part of this Agreement. All material modifications thereto shall be subject to the approval of the Commissioner. Prior to any material deviation by the Company in design or characteristics of the System from those set forth in the EASA plan, the Company shall submit to the Commissioner a description of the proposed deviation and the justification thereof, together with any additional information as may be reasonably specified by the Commissioner.

C. Contents

The version of the EASA plan shall contain, at a minimum:

1. A description of the design philosophy and principal assumptions for the System;
2. A listing of all operating margins for the upgraded System over the full temperature range to meet the applicable performance standards.
3. A description of all steps to be taken by the Company to ensure System reliability and to protect against failures to meet the performance standards (in lieu of a full reliability analysis);
4. A description of all channeling plans and switching systems to be utilized, together with the proposed assignment, (both Dial Location and spectrum allocation), of all Channels on the Subscriber Network;
5. All information necessary to comply with applicable local laws, rules, or regulations, including, without limitation, all environmental review requirements; and
6. The System Architecture, which shall include, at a minimum:
 - a. a block diagram of all principal sections of the System (e.g., headends, hubs, distribution plant, and optical electronics) showing the function and interconnection of all principal equipment to be utilized;¹

¹ To the extent that specific equipment has been selected, the Engineering Analysis and System Architecture should list the manufacturer and model of said equipment. Otherwise, such information should be supplied when the actual equipment is selected. To the extent that the Company has provided a list of the specific equipment to be utilized, the Company may thereafter change said equipment upon written notice to the Commissioner demonstrating that the performance quality of the new equipment will not be less than that of the equipment for which it is being substituted.

- b. design maps for all principal sections of the System, including:
 - the headend(s)
 - hubs
 - nodes
 - trunk cables
 - feeder cables
 - proposed studios and other production facilities, and
 - antennas, microwave towers, and satellite earth stations and uplink; and
- c. the detailed plan for the sequence of construction of the System, as required in Section 6.1 of this Agreement.

Throughout construction of the System pursuant to the Upgrade and any other upgrade of the System, as requested by the Commissioner, the Company must submit actual "as built" maps as the Upgrade proceeds.

PERFORMANCE STANDARDS

PERFORMANCE STANDARDS

<u>PARAMETER</u>	<u>FCC STD.</u>	<u>UPGRADE DESIGN STD.</u>	<u>COMMENTS</u>
Carrier-to-noise ratio	43dB	46dB	
Composite Triple beat (CTB)	-51dB	-53dB	
Composite second order (CSO)	-51dB	-53dB	
Hum	+/-3%		
Differential gain	20%		
Differential phase	10 degrees		
Chrominance- Luminance delay inequality	170 nanoseconds		
In band frequency response	+/-2dB		.75 MHz-5.0MHz
Visual signal	+3dBmV		after 100' drop

EQUIPMENT FOR MOBILE TESTING CAPABILITY

**EQUIPMENT FOR
MOBILE TESTING CAPABILITY**

<u>EQUIPMENT-MODEL</u> ¹	<u>USAGE</u>
Tektronix/HP Spectrum Analyzer	Distortion measurements
Computer/Printer	Documentation and printing of data
Rohde & Schwartz Demodulator	Demodulate rf to test video
TV Monitor/Receiver	Analyze video
Leakage detector	To measure signal leakage (FCC CLI)
Signal level meter	To measure signal level
Tektronix VM 700/A video and audio measurement test set (including VITS generator and audio generator).	To test video and audio parameters
Band Pass Filters	To filter channels being tested
Switchable Attenuators	To adjust level of signal being tested
Tools, cables, misc.	
Mobile Vehicle	

¹ The Company shall be entitled to substitute a piece of equipment, if any is available, which is equivalent to the foregoing equipment to the extent that such alternative equipment possesses features which, to the satisfaction of the Commissioner, are sufficient to measure fully each of the applicable parameters set forth in Exhibit 1 to this Appendix A.



T I M E W A R N E R
C A B L E OF NEW YORK CITY

ENGINEERING ANALYSIS & SYSTEM ARCHITECTURE

Submission to the City of New York

August 1998

TABLE OF CONTENTS

- 1.0 OVERVIEW**
- 2.0 DESIGN PHILOSOPHY**
- 3.0 SYSTEM ACTIVITY**
- 4.0 PLANT RELIABILITY**
- 5.0 TECHNICAL OPERATING MARGINS**
- 6.0 EQUIPMENT DESCRIPTION**
- 7.0 FACILITIES BLOCK DIAGRAM**
- 8.0 TYPICAL HFC (Hybrid Fiber Coax) ARCHITECTURE**
- 9.0 MANUFACTURERS TYPICAL SPECIFICATIONS**
- 10.0 SAMPLE DESIGN MAPS**

1.0 OVERVIEW

As we move into an era of information-rich, interactive home communications, in which traditional distinctions between television, computers and telephony blur, Time Warner is positioned at the very heart of this exciting, competitive new world.

Time Warner Cable of New York City will use HFC (Hybrid Fiber Coax) architecture that will provide improved reliability, picture quality and increased bandwidth. Each individual optical receiver (node) will serve a maximum of 2,000 homes. The cable system will be bi-directional with a minimum downstream bandwidth of 50 MHz to 862 MHz and an upstream bandwidth of 5 MHz to 40 MHz.

In order to minimize disruption to our customers, we will utilize existing distribution cable and building wiring, wherever feasible and technically sound. Finally, we will continue to work with the DOITT to address the limited number of buildings which are still wired in a loop-through manner.

To achieve these goals, our plans focus on the need to minimize service interruptions while proceeding expeditiously to upgrade the system. We are committed to exceed customer expectations, and, to that end, we will embark on a major communication program that will continue to keep our customers informed on the status of the upgrade as it relates to them.

2.0 DESIGN PHILOSOPHY

The upgrade system will consist of a bi-directional 862 MHz subscriber network with minimum downstream bandwidth of 50 MHz to 862 MHz and upstream bandwidth of 5 MHz to 40 MHz.

The system will be divided into multiple hub sites each serving areas of approximately 140,000 homes. These hubs will be interconnected using redundant fiber rings with diverse routes.

Fiber optic cable will be used to distribute signal to each node location within each hub. Each node will provide service to a maximum of 2,000 homes. The RF output of these nodes will interface with the existing coaxial plant for final signal delivery to the customer. in Manhattan, due to the extreme density, many blocks will have their own dedicated node.

By reducing the node size to such a small number of homes, the potential for a major interruption affecting thousands of subscribers is virtually eliminated. Our adoption of this advanced design once again demonstrates our strong commitment to quality customer service.

3.0 SYSTEM CAPACITY

The upgraded plant will be at an least 862 MHz bi-directional network built in the HFC (Hybrid Fiber Coax) configuration.

Downstream Bandwidth: 50 MHz to 862 MHz

Upstream Bandwidth: 5 MHz to 40 MHz

The downstream bandwidth will be used to deliver traditional cable television entertainment services. We plan to begin offering other more advanced services whenever they become technically and financially feasible. These services may include video-on-demand, cable modems, telephony, etc.

The upstream bandwidth may be used for control carriers for interactive services such as impulse pay-per-view, system telemetry and telephony. Based on Time Warner extensive experience with the upstream bandwidth, we do not intend to transport video signals in this part of the spectrum.

4.0 PLANT RELIABILITY

As previously described, the segmentation of the distribution plant and elimination of long trunk cascades will result in dramatic improvement in reliability and quality. Our experience indicates that the most serious system interruptions are caused by trunk problems. These trunk cascades, which are prevalent in the classic tree and branch architecture, generally provide cable signals to thousands of subscribers.

In Manhattan, Con Edison employs a "network power grid" which means that each transformer location has a primary and back-up secondary feed for redundancy. The "network" feature provided by Con Edison improves reliability significantly. We will install battery back-up power in those areas of Brooklyn and Queens that experience commercial power difficulties. It is appropriate to note that the performance of CATV stand-by power supplies has been somewhat unreliable and they most often generate outages instead of preventing them. We intend to be very cautious in choosing and deploying stand-by power supplies.

As for the facilities, such as headends, we will install generators and UPS systems that will provide constant and stable power to all equipment.

5.0 TECHNICAL OPERATING MARGINS

TIME WARNER CABLE OF NEW YORK CITY System Distortion Analysis

MANUFACTURER: <u>Generic</u>		Fwd Noise: 4.000 MHz (BW)	Noise = -59.2			
Unswitched Architecture		Rev Noise: 4.000 MHz (BW)	Noise = -59.2			
MANUFACTURER'S SPECIFICATIONS		TYPE 1 TRUNK	TYPE 2 BRIDGER	TYPE 3 LE		
RATED OUTPUT LEVEL		38	43	43		
RATED OUTPUT TILT		9	9	9		
RATED CHAN. CAPACITY		110	110	110		
RATED NOISE FIGURE		10	13	12		
RATED CTB (-dBc)		-84	-86	-68		
RATED XM (-dBc)		-81	-66	-67		
RATED CSO (-dBc)		-74	-82	-63		
RATED HUM (-dBc)		-70	-70	-70		
SYSTEM OPERATIONAL PARAMETERS		TYPE 1 TRUNK	TYPE 2 BRIDGER	TYPE 3 LE		
AMPLIFIER INPUT		8	12	15		
GAIN OR BR DC LOSS		28	31	28		
DESIRED TILT		9	9	9		
AMPLIFIER OUTPUT		38	43	43		
CHANNEL LOADING		95	95	95		
CASCADE LENGTH		2	1	2		
CALCULATED SECTIONAL PERFORMANCE		SUPER AMFIBER	REGULAR AMFIBER Dist.Port	TYPE 1 TRUNK	TYPE 2 BRIDGER	TYPE 3 LE
C/N.....		-55	-50	-54	-58	-59
CTB.....		-70	-63	-80	-67	-64
XM.....		-70	-61	-77	-68	-63
LOG.. 10.0 CSO.....		-70	-60	-73	-64	-62
HUM.....		-70	-70	-64	-70	-64
CALCULATED SYSTEM PERFORMANCE		FIBER SYSTEM SUPER & REGULAR	FORWARD SYSTEM FIBER & TRUNK	FORWARD SYSTEM (+BDGR)	FORWARD SYSTEM (+LEs)	
C/N.....		-49.0	-47.9	-47.5	-47.2	...C/N
CTB.....		-59.6	-58.8	-56.0	-53.0	...CTB
XM.....		-58.7	-57.6	-55.3	-52.2	...XMO
CSO.....		-59.1	-58.9	-57.8	-56.3	...2ND
HUM.....		-64.0	-58.0	-56.0	-53.1	...HUM

6.0 EQUIPMENT DESCRIPTION

We will continue to use our existing technical facilities to receive, process and transmit the core services to our subscribers. New equipment will be added to these facilities as new services are introduced. It is impossible to precisely specify such equipment at this time, as it is being developed based on trials in various cable systems throughout the U.S.

However, the expansion of the system's bandwidth and heavy implementation of fiber optics will necessitate the introduction of new equipment. The following is a brief description of this new equipment.

Optical Transmitters - Distributed feedback lasers will be used to transmit the entire downstream bandwidth of a single fiber. The laser modules will have an internal isolator and a predistorter to improve distortion characteristics. These lasers will be capable of transmitting broadband and narrowband services.

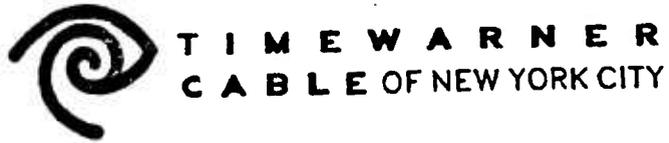
Receivers (Optoelectronic Node) - The fiber node will be equipped with one forward path optical receiver and one return path optical transmitter. The RF portion of the node will have the necessary amplification to provide for up to four (4) RF outputs. These outputs will be used for system distribution and will replace the current 550 MHz trunk and bridger stations. The node will be equipped with surge protection and it will be powered by a 60 VAC CATV power supply connected directly to the commercial power network (Con Edison).

6.0 EQUIPMENT DESCRIPTION (cont'd)

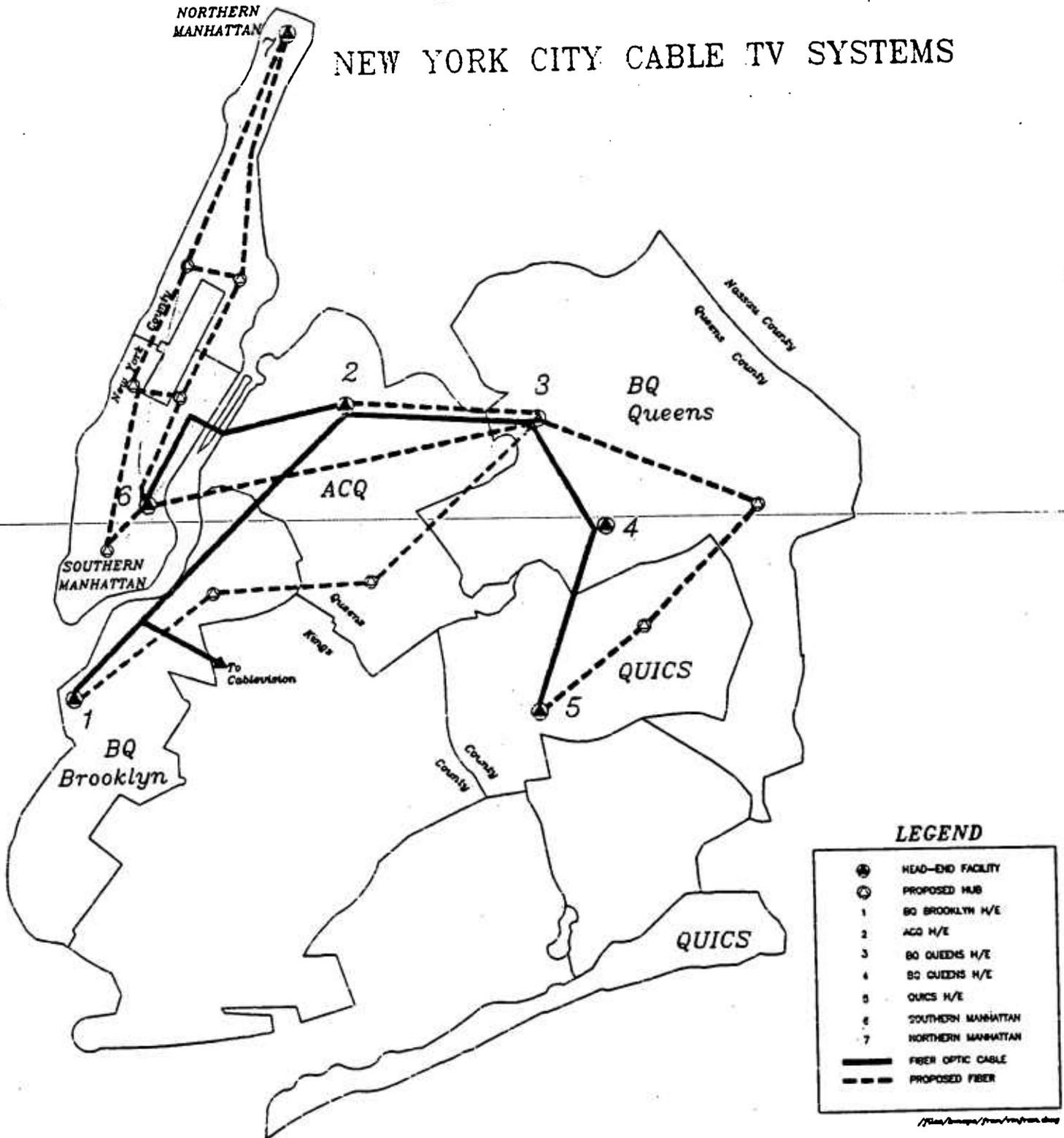
RF Amplifiers - We will deploy high-gain, power-doubled amplifiers. There will be a mixture of two and three-stage amplifiers which will be determined by specific system design. These amplifiers will be bi-directional and will be equipped with diplex filters, return amplifier and surge protection circuitry.

System Passives - All taps and other passives will have a minimum bandwidth of 750 MHz. The taps will be equipped with the brass SCTE approved ports that offer increased strength and protection against corrosion. The passives will be modular which provides for interchangeability of assembly without removing the housing from the cable. All passives will support telephony with some assembly without the need to replace the housing.

7.0 FACILITIES BLOCK DIAGRAM

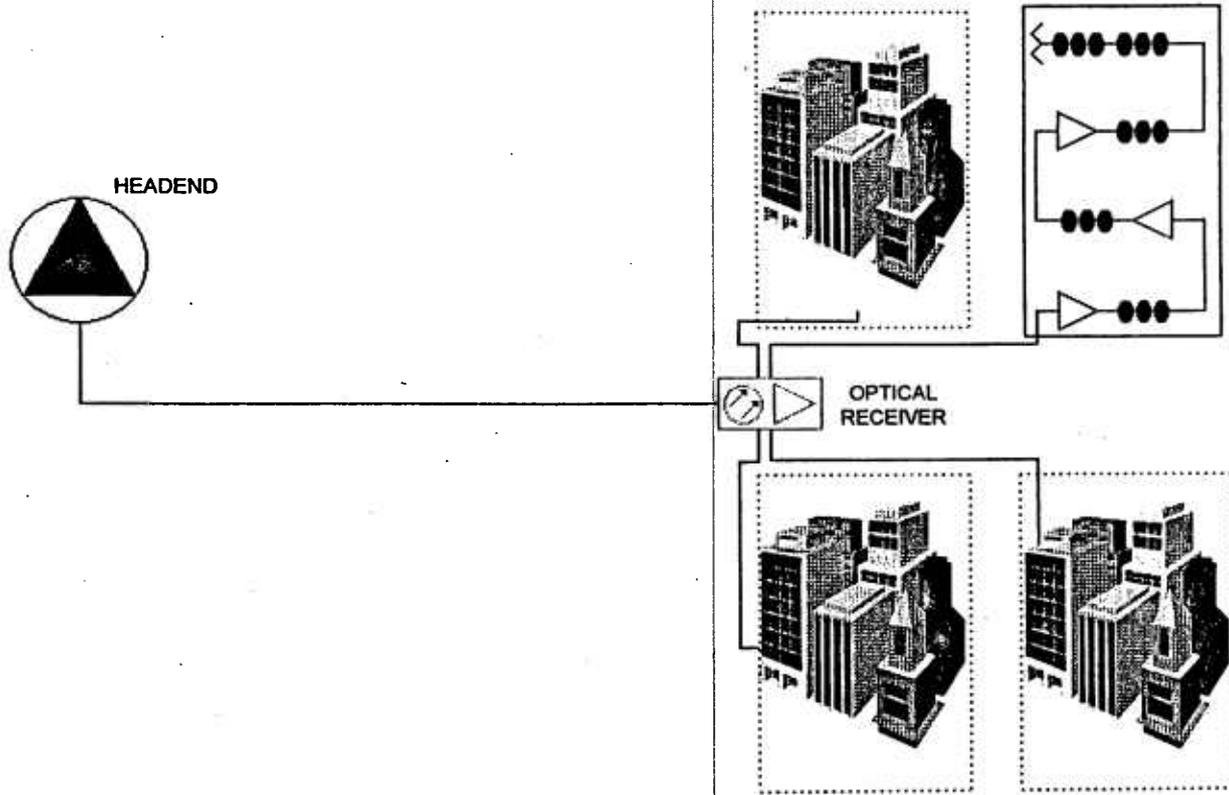


NEW YORK CITY CABLE TV SYSTEMS



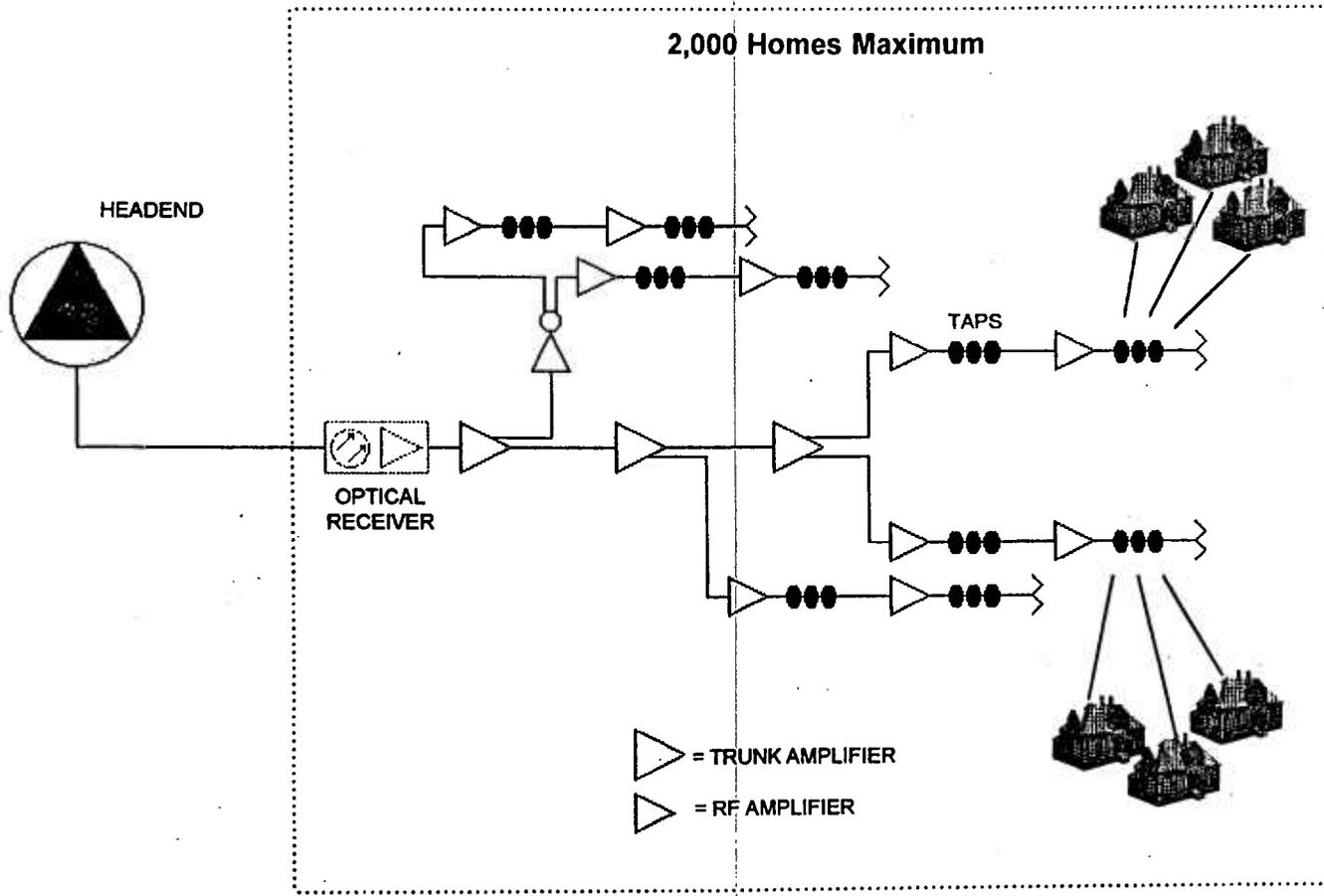
TYPICAL MANHATTAN NODE DEPLOYMENT

8.0 TYPICAL HFC ARCHITECTURE



TIME WARNER CABLE OF NEW YORK CITY

TYPICAL HFC ARCHITECTURE



TIME WARNER CABLE OF NEW YORK CITY

9.0

MANUFACTURERS TYPICAL SPECIFICATIONS

Optical Transmitter assembly

RF Characteristics:

Operational Bandwidth	50 - 860 MHz
RF Input Impedance	75 Ohms
RF Input Return Loss	14 dB min.
RF Connector Type	G-type

Optical Characteristics:

Optical Wavelength	1310 nm +/- 20 nm
Distortion Performance	(see link performance specs.)
Optical Connector Type	SC/APC
Laser Shutdown	Enable/Disable via. Control Module using LIFEnet™ Software
Eye Protection	Optical Safety Shutter

Power Requirements:

DC Currents Minimum/Maximum	
+5 Vdc	90 mA/1.7 A
+12 Vdc	350 mA/450 mA
+24 Vdc	400 mA/550 mA
Power Consumption	25 watts

User Interface:

Front Panel	Tri-state Module Status LED
Operational Mode	Push-button Selectable, LED display indication
Optical Power Test Point	5 mW/1 V, Scaled DC Voltage of Optical Output Power
RF Test Point	+17 dBmV/channel with 77 NTSC channel loading
Data/Control Interface	Serial Peripheral Interface (SPI) using LIFEnet™ Software

Environmental:

Operating Temperature Range	-20° to 65°C (-4°F to 149°F)
Storage Temperature Range	-40° to 80°C (-40° to 176°F)
Over Temperature Laser Protection	Software and Hardware active

Physical Properties:

Dimensions	1.5" W x 6.5" H x 14.25" D (3.81 cm x 16.51 cm x 36.20 cm)
Weight	4.0 lbs (1.8 kgs)
Mounting	AM-OMNI-HSG* equipment shelf, any of slots 3 - 10

9.0 MANUFACTURERS TYPICAL SPECIFICATIONS

Broadband Telecommunications Line Extender

Specifications

PARAMETER	UNITS	NOTE	FORWARD		RETURN RA-KIT-40L	
Passband	MHz	1	52-860		5-40	
Flatness	dB	2	±0.75		±0.75	
Minimum Full Gain	dB	3	30		N/A	
Operational Gain	dB	4	26		19	
Manual Bode Slope Control Range	dB	5	±4.5		N/A	
Interstage Equalizer Slope	dB	6	8±1		N/A	
Noise Figure 40/52/860 MHz	dB	7	NA/13/10		6.5/NA/NA	
Reference Frequency	MHz	8	860/750/50	860/550/50	N/A	
Output Level	dBmV		39/47/37	39/44/37	N/A	
Channel Loading			110 NTSC with 110 MHz	77 NTSC with 310 MHz	N/A	
			Compressed Data	Compressed Data		
Distortion	CTB	dBc	9	57	69	N/A
	XM	dBc	10	59	66	N/A
	CSO	dBc	9,11	59	68	N/A
	CIN	dBc	12	N/A	N/A	N/A
	STB	dBc	9	N/A	N/A	N/A
	SSO	dBc	9	N/A	N/A	N/A
Test Point (all)	dB	13	20 ± 1.0			
Return Loss (Minimum)	dB	14	16		15	
Hum Modulation	dBc	15	70		70	
DC Voltage	Vdc	16	+ 24.0 ± 0.25			
Current DC	mA	17	700		825	
DC Ripple	mV		15 P-P			
Power Consumption	W.		22.6		26.6	
AC Input Voltage Range	Vac		38-90			
AC Current Draw @ 90 Vac	A	18	0.45		0.52	
@ 75 Vac	A		0.49		0.57	
@ 60 Vac	A		0.56		0.64	
@ 53 Vac	A		0.59		0.71	
@ 45 Vac	A		0.66		0.75	
@ 38 Vac	A		0.73		0.84	
AC Bypass Current	A	16	15			
Group Delay, Typical		19				
Channel 2 (HRC)	nSec		20(28)		N/A	
Channel 3	nSec		9		N/A	
Channel 4	nSec		5		N/A	
Channel 5 or >	nSec		2 or <		N/A	
Channel T11	nSec		N/A		20	
Housing Dimensions			10.5"W x 8.0"D x 4.0"H (26.57 cm x 20.24 cm x 10.12 cm)			
Weight			7.2 lbs. (3.26 kgs)			
Ambient Operating Temperature			-40° to +60°C			

9.0 MANUFACTURERS TYPICAL SPECIFICATIONS

Dual Hybrid Mini-Bridger

Specifications

PARAMETER	UNITS	NOTE	FORWARD	
Passband	MHz	1	50 - 862	
Flatness	dB	2	±0.75	
Minimum Full Gain	dB	3	41	
Operation Gain	dB	4	36	
Manual Control Range				
Gain	dB	5	0-8	
Slope	dB	6	±1	
Noise Figure		7		
50 MHz	dB		13.0	
750 MHz	dB		11.5	
Ref. Frequency	MHz		862/50	862/650/50
Output Level	dBmV		47/37	37/44/37
Channel Loading			110 NTSC	94 NTSC with 200 MHz compressed data
See slope chart			S1	S2
Distortion				
CTB	dB	8	-57	-69
XM	dB	9	-59	-68
CSO	dB	8	-59	-68
CIN	dB	10	N/A	-71
Test Point				
Input	dB	11	20 ± 1.5	
Output	dB		20 ± 0.5	
Return Loss	dB	12	14	
Hum Modulation	dB	13	-70	
B+	VDC		+24.0 ± 0.25	
Current DC	mA	14	1310	
DC Ripple	mV		15 P-P	
Power Consumption	W		39.3	
AC Input Voltage	V		38-60 VAC	
AC Current			w/o ACB	
@ 60 VAC	A		0.69	
@ 53 VAC	A		0.80	
@ 45 VAC	A		0.92	
@ 38 VAC	A		1.09	
AC Bypass Current	A	15	10	
Housing = MB-HSG			L = 15.37"	W = 5.51" H = 9.59"
			Weight = 15 lbs.	
Operating Temp.	deg.		-40° to +60° C	

Specifications subject to change without notice.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

1285 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019-6064

TELEPHONE (212) 373-3000
FACSIMILE (212) 757-3990

LLOYD K. GARRISON (1946-1991)
RANDOLPH E. PAUL (1946-1956)
SIMON H. RIFKIND (1950-1995)
LOUIS S. WEISS (1927-1950)
JOHN F. WHARTON (1927-1977)

RICHARD DEHÉ**
PHILIPPE JAMBRUN**
PIERRE PETIT**
EUROPEAN COUNSEL

WRITER'S DIRECT DIAL NUMBER

212-373-3329

WRITER'S DIRECT FACSIMILE

WRITER'S DIRECT E-MAIL ADDRESS

hjewett@paulweiss.com

1615 L STREET, NW
WASHINGTON, DC 20036-5694
TELEPHONE (202) 223-7300
FACSIMILE (202) 223-7420

62, RUE DU FAUBOURG SAINT-HONORÉ
75008 PARIS, FRANCE
TELEPHONE (33 1) 53 43 14 14
FACSIMILE (33 1) 53 43 00 23

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100, JAPAN
TELEPHONE (81-3) 3597-8101
FACSIMILE (81-3) 3597-8120

SUITE 2201 SCITECH TOWER
22 JIANGUOMENWAI DAJIE
BEIJING, 100004
PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 6512-3628-30
FACSIMILE (86-10) 6512-3631

13TH FLOOR, HONG KONG CLUB BUILDING
3A CHATER ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2536-9933
FACSIMILE (852) 2536-9622

NEALE M. ALBERT
MARK H. ALCOTT
ALLAN J. ARFFA
ROBERT A. ATKINS
JONATHAN R. BELL
DANIEL J. BELLER
MITCHELL L. BERG
MARK S. BERGMAN
BRUCE BIRENSOIN
RICHARD S. BORISOFF
JOHN F. BREGLIO
RICHARD J. BRONSTEIN
JEANETTE K. CHAN
LEWIS R. CLAYTON
JAY COHEN
JEROME ALAN COHEN
RUSSELL E. COLWELL
DOUGLAS R. DAVIS
ROBERT D. DRAIN
JAMES M. DUBIN
LESLIE GORDON FAGEN
DOMINIQUE FARGUE**
PETER L. FELCHER
MITCHELL S. FISHMAN
ROBERT C. FLEDER
MARTIN FLUMENBAUM
TERENCE J. FORTUNE
PAUL D. GINSBERG
MAX GITTER
ERIC S. GOLDSTEIN
CHARLES H. GOODE, JR.
BRUCE A. GUTENPLAN
GAINES GWATHMEY, III
ALBERT P. HAND
GERARD E. HARPER
ROBERT M. HIRSH
STEVEN R. HOWARD
NICHOLAS C. HOWSON
ANNALIESE S. KAMBOUR
MEREDITH J. KANE
BRAD S. KARP
JOHN C. KENNEDY
FRED KINMONTH*
ALAN W. KORNBERG
RUBEN KRAIEM
DAVID K. LAKHDIR
STEVEN E. LANDERS

JOHN E. LANGE
ROBERT L. LAUFER
DANIEL J. LEFFELL
WALTER F. LEINHARDT
MARTIN LONDON
SCOTT R. MACLEOD
EDWIN S. MAYNARD
JOHN W. MCENROE
ROBERT E. MONTGOMERY, JR.
TOBY S. MYERSON
MATTHEW NIMETZ
KEVIN J. O'BRIEN
LIONEL H. OLMER*
JOHN J. O'NEIL
ROBERT P. PARKER*
MARC E. PERLMUTTER
JAMES L. PURCELL
LEONARD V. QUIGLEY
VALERIE E. RADWANER
CAREY R. RAMOS
CARL L. REISNER
WALTER RIEMAN
SIDNEY S. ROSEITCHER
RICHARD A. ROSEN
STEVEN B. ROSENFELD
PETER J. ROTHENBERG
WARREN B. RUDMAN*
JEFFREY B. SAMUELS
TERRY E. SCHIMEK
KENNETH M. SCHNEIDER
ROBERT B. SCHUMER
JAMES H. SCHWAB
MICHAEL J. SEGAL
STEPHEN J. SHIMSHAK
DAVID R. SINGULAR
MOSES SILVERMAN
STEVEN SIMKIN
ROBERT S. SMITH
MARILYN SOBEL
THEODORE C. SORENSEN
PHILLIP L. SPECTOR*
STUART G. STEINGOLD
JUDITH R. THOYER
MARIA T. VULLO
STEVEN L. WOLFRAM
ALFRED D. YOUNGWOOD

October 21, 1998

*NOT ADMITTED TO NEW YORK BAR.
**ADMITTED IN FRANCE ONLY.

RECEIVED

OCT 23 1998

Mr. John Grow
Special Counsel -- Cable
State of New York Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

Re: Applications by Time Warner Cable of New York City
on behalf of seven franchisees

- Commission Docket Nos. ✓ 98-V-1253 (Western Brooklyn)
98-V-1254 (Eastern Queens)
98-V-1255 (Staten Island)
98-V-1256 (Western Queens)
98-V-1257 (Southern Manhattan)
98-V-1258 (Northern Manhattan)
98-V-1259 (Queens -- QUICS)

Dear Mr. Grow:

This letter is to confirm that the time for filing comments on the above-referenced applications has been extended to October 30, 1998. Accordingly, the

1998 OCT 23 PM 2:02
RECEIVED
PUBLIC SERVICE
COMMISSION
OSCE-FILE-CITY

Mr. John Grow

2

time for the applicants to reply to comments will be extended to November 9, 1998.

If there is any other change in the schedule, please let us know.

Sincerely,



Hilary Jewett*

cc: Barry Rosenblum, President, Time Warner Cable of New York City
Robert Jacobs, Vice President and General Counsel, Time Warner Cable of
New York City
Elaine Reiss, New York City Department of Information Technology and
Telecommunications
Bruce Regal, Office of the Corporation Counsel of the City of New York
Christopher Collins, New York City Council, Land Use Division
Allan J. Arffa
Karen S. Kennedy

*Not yet admitted in New York