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12 July 1993

CHANNEL: A MEMBER OF THE
ELECTRONIC MEDIA NETWORK
LIMITED GROUP

The Technical Committee
Independent Media
Multiparty Forum

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Dear Ms Emmett

M-NET SUBMISSION

Thank you for the opportunity to comment on the draft Independent Broadcasting Authority Bill.

The matters raised in the Bill affect our business profoundly, and in the time available it has not been possible to properly consider all aspects of the Bill and to formulate proposals in full. However, we have prepared the accompanying document for your consideration and will be happy to provide further responses if called upon to do so.

May we respectfully request the opportunity to address the Technical Committee on some of the issues raised in the Bill? We propose to do this in the form of a presentation to the Technical Committee, with possibly a question and answer session afterwards.

With regards

We won't stop the magic

PP 
GERRIE DE VILLIERS
M-NET CHANNEL CEO

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M-NET

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**COMMENTARY ON THE FOURTH
WORKING DRAFT OF THE INDEPENDENT
BROADCASTING AUTHORITY BILL (22
JUNE 1993)**

I INTRODUCTION

In shaping the post-Apartheid South Africa a large degree of consensus exists that the autocratic structures of the past should never be repeated. Parliament should be democratised, the rule of law should be supreme and quasi-judicial and administrative structures should act in the public interest and apply the rules of natural justice without fear of executive intervention. The procedures of appointment, the deliberation and decisions should be fair, well-reasoned and equitable.

Increasingly, broadcasting is moving from a national to an international activity. For South Africa, this means creating a regulatory environment which is not too rigid to stifle local broadcasters against foreign competition. This scenario is already proving serious for the ITV companies in Britain, for instance. Unless they are given more regulatory freedom to compete, foreign investors will continue to enjoy more opportunities to dominate. The lack of flexibility on the part of ITV companies will also prevent re-investment in a broadcasting technology and thus the ability to stay abreast of developments.

The rapid development of technology has made more broadcasting delivery systems possible. Satellites, microwave systems, more efficient use of spectrum through future digitalisation has opened up the airwaves. It is to be hoped that the regulatory environment will facilitate and foster all the broadcasters hoping to gain audiences.

The freedom to broadcast is part of freedom of speech, which is a cornerstone of democracy. The rights of the viewing and listening public, along with those of broadcasters, should receive prime consideration in the establishment of the Independent Broadcasting Authority - this includes the appointment procedures (free, fair, open); the provisions contained in the Bill (aimed at ensuring a viable industry representing a diversity of voices) and efficient administration (to promote broadcasting, not to control or over-regulate).

Over-regulation, a heavy-handed approach by the IBA and threats of suspension and revocation of licenses as well as a discretionary amendment of existing licence conditions, are all contrary to the spirit of fairness which would surround the Bill of Rights : a Bill which will, according to all drafts, guarantee freedom of expression and only allow for limitations which are reasonable and in accordance with an open democracy.

We have found the fourth draft for the Independent Broadcasting Authority Bill to be generally in accord with these principles. The appointment procedure of the IBA, its responsibility to Parliament alone, its open procedures, its positive and wide ranging aims and its recognition of self-regulation, are features which can only be commended.

We believe, however, that certain aspects should be reviewed in the light of the basic principles stated above. At times the draft tends to over-regulate and would seem to impinge upon the autonomy of the IBA and undermine the expertise, ability to adjudicate and independence of this body.

II COMMENT

Section 3 : Policy

It is submitted that sub-section (3) be limited to public broadcasters. The duties mentioned are typical public broadcasting duties. Provisions which obligate private broadcasters to have a certain content - news etc. - smack of censorship, autocratic rule and are contrary to free market principles. Television has changed from generalist one-size-fits-all services to a multitude of thematic channels, such as music channels, movie channels, news channels, children's channels, etc. It no longer makes sense to impose rigid, prescriptive programme obligations on broadcasters.

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M-Net supports the point of view that section 3 should not provide for "shall". It should, as the British Broadcasting Act 1990 often states, provide that the IBA should strive towards these objects "as far as possible". This approach leaves some discretion for the IBA and is a more practical way of stating ideals. For example, it is unlikely that the IBA would succeed in "ensuring" that private and community broadcasting licenses are controlled by persons or groups from a diverse range of communities. This ideal is economically and from a point of expertise not attainable.

Section 5 : Constitution of the Authority

It is submitted that section 5(2) should be more specific and provide that a lawyer with at least 10 years experience, a businessman of repute and a broadcasting technologist should be members. Since the chairmen of the two standing committees will also be members, two members will by implication be specialists (law and broadcasting technology).

It would be unrealistic to offer members three year posts on a full-time basis. Will such an offer draw top expertise? Five years will be more acceptable and give the Board sufficient time to do realistic future planning.

M-Net remains of the view that the constitution of an independent telecommunications authority for South Africa remains of the utmost importance. It is understandable that broadcasting is at present at the fore of events, but telecommunications generally should be brought under one umbrella body. It is widely accepted that telecommunications and broadcasting technology is converging rapidly, creating synergies to such an extent that new services for the benefit of the public are emerging. Many countries have opted for single regulatory bodies like the Federal Communications Commission (FCC) in the USA. South Africa will not escape the negative consequences if it decides to enact a Bill on outdated and anachronistic guidelines.

Section 33 : Provision of broadcasting signal distribution

A sub-section (3) should be added: the signal distribution rights of other broadcasters, including M-Net, Trinity Broadcasting, Radio 702 and others, should also be deemed to have been granted under this Act. A fuller motivation in respect of M-Net's proposal in this regard is attached at the end of this document as Addendum A.

It is submitted that "seven years" should be substituted by ten years. M-Net's existing rights should, until they expire after more or less 13 years, be guaranteed.

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It is submitted that section 67 be amended to include signal distribution licenses. See note 19 of the draft which also mentions this aspect.

Section 33 should also include a provision similar to section 41 (13) which creates a legitimate expectation of renewal if the licensee materially complied with the licence conditions.

Section 41 : Granting and renewal of broadcasting licences

M-Net supports the point of view that if advice is sought from legislative bodies, it would compromise the independence of the IBA. Any legislative body could, by way of a standing committee, make representations to the IBA, which could be considered on an equal level by the IBA together with other representations.

Section 41(15) : Fees

A matter of principle is at stake here. The IBA should not be seen to be **selling** or **hiring** out a frequency. Frequency, being in the public domain, should never be perceived to have been alienated. Therefore it must be stated clearly that the fees levied by the IBA should be based on the costs of regulation and not be seen as a sale. The British experience where frequencies were, in effect, "sold" for amounts which were often massive, is unacceptable and was also subjected to severe criticism there for the irreparable harm caused to

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the broadcasting industry. Several broadcasters have scrapped plans for local productions in order to continue licence fee payments - in spite of undertaking not to do so in their original bids. Advances in technology have vastly increased access for new broadcasters. Better utilization of broadcasting frequencies by way of microwave distribution, digital compression techniques and rapid growth in satellite feeds has multiplied the potential for new television channels.

It is submitted that the words "as it deems fit" be substituted by words which limit the discretion of the IBA to "reasonable costs of regulation in terms of the Act".

Section 42 : Public broadcasting licences

In principle it is unacceptable for a legislative body to play a role in a judicial or quasi-judicial process. The Harris cases of the early 1950's illustrate the point. Once the IBA is constituted it must be trusted to take informed and well reasoned decisions. If Parliament is drawn into the matter, the process is politicised. The traditional and democratic distinction between the legislative and judicial process is blurred.

Section 43(2)(h) : Affirmative action

While M-Net supports a policy of affirmative action, it is submitted that the matter of affirmative action should not be introduced on a piece-meal basis into different laws. The matter should be settled by the Bill of Rights which would apply to all sectors of the community on an equal basis.

We therefore submit that the sub-section be referred to the constitutional technical committee and that it be removed from this draft and eventually, the IBA Act: the Bill of Rights must set a national standard.

Section 45 : Limitations on foreign control

It is submitted that foreign investment should be unlimited but that their rights to appoint directors should be limited to minority voting interests. In this manner foreign investment would be drawn to South Africa, and on the other hand, the fear that foreigners would control policy and content would then fall away.

Section 46 : Limitations on the control of private broadcasting services

While an overconcentration of power should always be avoided, the rules to limit ownership must enhance, not harm the cause it serves: the creation of more media and a true diversity of voices to serve the public best.

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It is submitted that the absolute nature of section 46 is unacceptable and counterproductive. The South African economy, the peculiar demographic distribution and the need for quality in broadcasting, do not allow for stringent, absolute rules in this area. In practice, regulators in most countries act sensibly to continue to allow media companies to convey information and entertainment in all types of media. Most international media groups are typically highly integrated, utilizing newspapers in print media; and television, radio and film as the subjects dictate.

It would be acceptable to guide the IBA by a word such as "undue". See the Irish Broadcasting Act. The term "undue" is quite understandable in law - see R V Butler 1992 Canadian Criminal Cases 129 where Supreme Court Judge Sopinka says: "Standards which escape precise technical definition such as 'undue', are an inevitable part of the law... It is within the role of the judiciary to attempt to interpret these terms."

Section 47 : Limitations on cross-media control of private broadcasting services

- (1) Once again it is submitted that the limitations will be difficult to apply in practice.

But the IBA should have a discretion to vary the rules according to the needs of society, the quality of product and existing national or local economic conditions.

Quality of service should not be undermined by too high ideals of multiplicity of voices. It is submitted that multiplicity of voices could be attained by other means.

The code for broadcasters, consumer criticism and the market-place will all contribute towards multiplicity. M-Net supports the idea that more voices should be heard on the airwaves, but cautions against an over-kill. As in the previous section, the overall guideline should be prevention of overconcentration of power seen against the context of the activities of a broadcaster in the media.

- (2) Secondly, section 47(7) should be amended to allow for newspapers with the said circulation of 300,000 within the licence area to have control in more than one broadcasting licence, predicated against any/all applications received and the needs of the public. It will soon become irrelevant whether a broadcaster has two or forty licences, bearing in mind the increased availability of broadcasting channels.

Section 47(10) should also allow for TV and sound broadcasting interests of the same maximum percentage. Since massive investments are at stake, the percentage of 35 should, however, only be allowed to be increased and not be decreased by the IBA.

**Sub-sections 47(8) and (9) and (11) and (12)
should be amended accordingly**

General observation

The words "in a position to be" (etc.) which frequently appear in this section, are vague and should be scrapped.

Section 50 : Local content

Local content is not a simple matter to be defined in terms of percentages. In the first instance, local content is determined by the nature of the broadcasting service. There is a clear difference between local content on a generalist TV station, offering a wide variety of programmes and events in order to cater for a broad audience; and a thematic channel, which broadcasts mainly movies, or sport, or news.

Subscribers subscribe to M-Net to see international movies recently shown on the cinema circuit. Local films have to be of very high quality to compete with this international product, which is why M-Net carefully selects local films which it pre-licences for screening. Since 1990, M-Net has co-financed in this manner 9 locally produced films - almost the entire South African production over the period.

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The debate then finally revolves around quality versus quantity. On behalf of our subscribers, M-Net feels very strongly that it is better to produce 2 good films than 10 of poor quality. This discretion is only possible however, if the local content obligation is realistically set in fixed financial terms.

Section 50(2)(b) and (c) interfere with editorial independence. The market-place will steer the matter itself and **regulation of time and percentage** are totally unacceptable.

Section 50(3) is far too prescriptive and totally unacceptable. The market-place should be allowed to determine the proportion of contemporary music to be broadcast. Obviously this would be a matter which the IBA would consider when granting a licence, especially to a public broadcaster. The code of conduct, the general aims of the Act and the demands of the market-place should be the only steering forces.

Section 51 : Amendment

M-Net accepts (a) (b) and (c) but regards (d) as too wide-ranging. It grants a wide, almost unfettered, discretion to the IBA and would create uncertainty. The Act itself would, of course, influence the rights of existing broadcasters, but it would be unfair to grant existing private broadcasters a further ten years (we would submit that M-Net be granted its remaining 13 years as of October 1993) and then load their conditions to such an extent that the rights could have been withdrawn in any case.

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The shareholders of M-Net have made a massive investment in the company and the rights of 800,000 subscribers are also at stake. : no wide-ranging amendment power, such as section 51(d), should be allowed to interfere in those rights in such an almost unfettered fashion.

We have been unable to find a similar authority to amend in Anglo American and European Broadcasting legislation. The Irish Law allows for amendment on grounds similar to 51(a), (b) and (c); but then only for sound broadcasting, not for TV.

It is submitted with confidence that a Constitutional Court will also invalidate section 51(1)(d). It creates such uncertainty that it is destructive of the essence of freedom to broadcast. Both the SA Law Commission and the ANC's drafts of a Bill of Rights - to name but two - do not allow limitations on the freedom of speech to remove the essence of the right. The wide ranging nature of 51(1)(d) removes the essence of the right by way of vagueness in the authorising language.

Section 52 : Term of Broadcasting Licence

Section 43 provides that upon the commencement of this Act, all private broadcasting services which were licensed prior to the commencement of this Act shall be deemed to have been licensed in terms of this Act and such licenses shall accordingly in all respects be subject to the provisions of this Act.

Section 52(1) provides that subject to the provisions of this Act, a licence shall only be valid and in force for the period specified in that licence. The period specified in M-Net's licence is twenty years of which almost seven years have now expired. Section 52(2) provides that a public and private television broadcasting licence shall be valid for a maximum period of ten/seven years. (In the case of a sound broadcasting licence the term is seven or five years). It would seem that section 52(2) would affect the licence term of M-Net. This would decrease the term to ten or seven years.

As a starting point it must be emphasized that a decrease to seven years from the balance of 13 years would amount to a radical infringement upon vested rights which include a massive capital investment from shareholders and would also affect the rights and legitimate expectations of 800,000 subscribers who have made an investment in decoders.

Our request is therefore that the present balance of 13 years of MNet's licence be left intact in terms of section 52(1) and that section 52(2) should not be applicable.

If the intention is that the term should be subject to section 52(2), then M-Net would seek the opportunity to once again file representations in this regard.

Section 58 : Control of advertisements

MNet has studied the Advertising Standards Authority's latest proposal in regard to the amendment of section 58 and supports this proposal.

Section 62 : Equitable treatment of political parties by all broadcasting services during an election period

Section 62(2) should be amended in so far as the words "during an election period" should be added. Outside election periods the ordinary rules of the Code of Conduct will apply.

Section 63 : Broadcasting Monitoring and Complaints Committee

It is submitted that monitoring should only take place during an election period. Otherwise the monitoring function could easily be understood to be more than mere monitoring and in fact a certain kind of control which smacks of censorship. If a broadcaster - and here the SABC may be a good example - finds it necessary that its programmes should be monitored generally, it can apply to the Broadcasting Monitoring Committee for such service, which would probably also be for the account of the broadcaster.

Section 67 : Powers in a case of a breach of broadcasting licence conditions

Section 67(2) provides that a public broadcasting licence may not be suspended or revoked by the Authority without the consent of Parliament. We note that this provision is still subject to debate at the Technical Committee. We are strongly opposed to the politicisation of this Act and section 67(2) would be an example of such politicisation. The IBA is set up with great care and to subject a decision of the Authority to the consent of Parliament on a matter which deals with suspension or revocation would be to reduce the Authority's status. The ordinary recourse by way of review to the Supreme Court remains open.

Why should Parliament set itself up as a final court of appeal? The Harris cases rejected Parliament's setting itself up as a High Court. Section 67(2) impinges upon the division between legislative and judicial functions and cannot be supported at all.

Schedule 4 : Control

The 15 % "deemed control" in clause 3 of the Schedule is contrary to accepted norms. The minimum percentage should be set at 30 % as is the norm accepted by the Johannesburg Stock Exchange. Australia has similar rulings. We propose that serious consideration be given to 30 % as the deemed percentage. The 15 % is far too onerous and creates uncertainty for those who obviously do not have control but have to prove this to the Authority.

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III CONCLUSION

It is of the utmost importance that consideration should be given on an urgent basis to the question whether the Independent Broadcasting Authority should be constituted on its own. Sufficient reasons exist for an umbrella body to be constituted for the whole area of telecommunications in South Africa.

Further, the following is paramount for M-Net :

- (a) An acknowledgement of its present term for its broadcasting and signal distribution licence (balance 13 years).
- (b) A scrapping of the wide powers of amendment in 51(d).
- (c) A re-look at the fees provision in section 41(15).
- (d) A re-consideration in depth of the concentration and cross-ownership rules in sections 46 and 47.
- (e) A re-consideration of the local content rule, but especially the regulation of percentage of time (coded and unencoded). The matter should be left to the discretion of the IBA after hearings and not be over-regulated as is the case in section 50. Scrap section 50.
- (f) An increase of the deemed control percentage to 30 %.

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- (g) A removal of Parliament's role in regard to cancelling and revocation of public broadcasting licences.

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ADDENDUM A

***M - NET AS A SIGNAL
DISTRIBUTION ORGANISATION***

1. **In terms of Chapter 6, clause 2 of the Draft IBA Bill, Sentech is deemed to be licensed under the proposed Act for the distribution of broadcast signals.**

It is M-Net's contention that it should also be automatically grandfathered under the Bill, since M-Net operates a substantial broadcast signal distribution operation, managed in its entirety by its Subscriber Management Services Division.

This Addendum states the M-Net case for automatic inclusion under the Bill, as for Sentech. While all the broadcasters affected by this Bill distribute their own signals in some form or other, it will be demonstrated in this submission that M-Net's signal distribution activity is already substantial and constitutes a vested right.

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2. **BACKGROUND**

When the M-Net transmitter network was established during 1986 and subsequently expanded in 1987, 1988 and 1992, M-Net initially utilised the services of the SABC in establishing and maintaining the M-Net transmitter network. Although M-Net soon also acquired its own transmitters, operating and maintaining them on sites not controlled by the SABC, it made sense to continue to use the SABC, as they had long established control of the "high sites" in the country, giving better broadcast coverage and creating economies of scale.

As M-Net subsequently expanded its network, it started making use of various alternate service providers to install and maintain the expanding M-Net signal distribution network. One such organization is Telkom who provides microwave networks. Others are Intelsat, British Telecom, Telemedia, etc., who all provide various sub-components of the M-Net signal distribution network. These signal distribution networks are managed by M-Net with absolutely no involvement on the part of Sentech.

M-Net can therefore certainly be classed as an independent signal distribution organization whose substantial investment in its signal distribution network must be protected, as is the case with Sentech.

3. **M-NET's CURRENT SIGNAL DISTRIBUTION NETWORK**

The current M-Net transmitter network consists of the following components:

- * 50 professional terrestrial transmitter sites operated and maintained by Sentech, but managed and paid for by M-Net. These sites are used for the distribution of M-Net's Domestic and International Services.
- * 10 professional M-Net stations fully operated by M-Net and maintained by Sentech. This will soon expand to 22 sites. These sites serve smaller cities throughout SA.
- * Over 70 privately owned transmitter sites fully controlled by M-Net with no operational involvement from Sentech or any other company. M-Net ensures the ongoing maintenance and repair of all these cellular sites.
- * Multiple permanent as well as ad-hoc microwave links operated and maintained by various private service providers on behalf of M-Net.
- * National microwave links supplied and operated by Telkom, but managed by M-Net.
- * An MMDS network providing services to closed user business groups. These facilities are paid for by M-Net and operated and maintained by Sentech as well as other service providers.

M-Net, through its signal distribution operation, is providing a service presently covering South Africa and is undoubtedly an established signal distribution organization in its own right.

M-Net currently expends over R 15,0 million per annum on operating its transmitter network and has expended a total capital expenditure in excess of R 36 million on its distribution network to date.

4. **CURRENT CONTRACTS**

M-Net has already entrenched itself well as an international and national signal distribution organization. Sentech, as regards the services it provides M-Net, acts not as signal distributor but purely as a service provider in operating and maintaining certain M-Net earth station facilities and transmitter sites. Legally M-Net is the signal distributor for its Domestic service covering South Africa.

M-Net has distribution contracts both internationally and nationally. Within South Africa, those contracts which are independently controlled and managed by M-Net are:

- * Intelsat for the Intelsat satellite transponder on the 63°E satellite (M-Net Domestic).
- * British Telecom for a permanent contribution feed earth station out of the UK.
- * Transkei Broadcasting Corporation for operation of the M-Net Transkei signal distribution network.

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- * **Traffex (SA) and Telkom (SA) for providing data communication facilities to control the telemetry aspects of the signal distribution network.**
- * **Telkom for the microwave distribution facilities around South Africa.**
- * **Sentech for maintaining certain for the M-Net terrestrial transmitter sites.**
- * **Sentech for the M-Net encrypted TV1 distribution system.**

Although M-Net is not operating at the same logistical scale as that of Sentech, the basic organizational functions are exactly the same.

5. COMPARISON WITH SENTECH

As Sentech has effectively already been awarded a signal distribution licence under the proposed Bill, it would make sense to compare Sentech as an organization with M-Net's Signal Distribution organization.

- * **Both organizations own transmitter sites although M-Net's is on a much smaller scale than Sentech.**
- * **Both organizations are utilizing their own MMDS distribution systems. M-Net has in fact evolved an extensive MMDS closed user business group signal distribution network.**

- * Both organizations are involved in independently leasing satellite capacity from Intelsat, mainly for signal distribution purposes.
- * Both organizations operate cellular TV networks.
- * Both organizations operate broadcast TV satellite networks.
- * Both organizations have the ability to plan signal distribution facilities.
- * Both organizations have equal representation in working groups on technical broadcasting issues.
- * Both companies plan and establish transmitter sites. Due to Sentech's historic and expert role in frequency planning on behalf of the Department of Posts and Telecommunications, Sentech has played a strong advisory and approval role in M-Net's frequency and transmission planning.

ADDENDUM B

TELECOMMUNICATIONS CLAUSE

From comments and discussions in newspaper and at recent conferences on broadcasting, it seems that there is a feeling in some quarters that the draft broadcasting bill should make provision to prevent broadcasting licence holders from being granted licences for telecommunications.

In all likelihood the Technical Committee will not make the mistake of including such provisions in the Bill, particularly as there is no precedent elsewhere in the world for this proposal.

However, apart from the fact that M-Net is a partner in an application for a cellular telephony licence, immediate trends in broadcasting and telecommunications in the rest of the world prompt us to react to this train of thoughts.

We would like to request the opportunity to motivate more fully, but present the following conclusions in an attempt to make the issue more understandable.

1. The attached guidelines to the present Telecommunications and Broadcasting legislation in the UK shows that a clear analysis of this question leads to the conclusion that it would stimulate, not harm competition; both in the telecommunications and broadcasting sectors.

The guidelines also highlight another important fact: the convergence of telecommunications and broadcasting is an accepted fact, and regulations should make provision to accommodate both; or deny new, improved technologies and services to the public.

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2. It is more likely that the proposal is based on a misunderstanding of why some legislation contains clauses limiting the participation of the telecommunications sector in broadcasting, not the other way round.

The reason for this is simple: in the 1970's the legislators sought to prevent telephone companies with huge existing cable networks from crushing the then emerging cable broadcasting operators before they could establish themselves.

As the guidelines also indicate, that motivation has now fallen away, and the UK legislators have made it clear that they will encourage, not prevent participation by both broadcasting licence holders and telecommunications licence holders in all sectors of their respective businesses. It is seen to be stimulatory for both sectors, to encourage competition and to allow more and new services to be offered to the public.

3. The most recent developments in technology have given huge momentum to the convergence of broadcasting and telecommunications. Attached are newspapers articles pointing to recent shifts in the industry to accommodate the enormous anticipated changes. It may be said that this force has become unstoppable, and to enact anachronistic and misguided provisions in South Africa now would be contrary to movements elsewhere in the world. The net result will be for South African broadcasters and telecommunications companies to be sidelined when the giants in this sector of the industry start to offer video telephony on a broad scale, or truly interactive television for education and entertainment purposes.

**GUIDELINES FROM UK TELECOMMUNICATIONS AND BROADCASTING
LEGISLATION**

Chapter 5:

5.1 Under the present broadcasting and telecommunications regimes, two licences are generally required before entertainment services can be offered locally to residential customers - a Broadcasting Act licence to provide the service, ie to prepare programmes assembled and packaged into channels with a view to having them delivered by cable or microwave radio to people in their homes, and a Telecommunications Act licence to convey the relevant signals to customers. The licences granted to BT, Mercury, Kingston Communications and some others under the Telecommunications Act specifically prevent these operators from conveying in their own right entertainment services to residential customers (the conveyance of signals within the network and to business customers is, however, permitted). The Government also has the power under the Broadcasting Act to prevent national PTOs, their parent companies, subsidiaries or associates from holding a licence to provide such services.

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The conveyance of entertainment services under the Telecommunications Act

5.2 The proposal in the consultative document was that:

The Government recognises that allowing existing telecommunications operators to convey entertainment services may be unlikely in practice to lead cable operators to make greater use of the telecommunications operators' networks and is not persuaded that the potential benefits of such a step would sufficiently outweigh the risks to achieving more effective competition. It therefore proposes not to remove the present restriction in telecommunications operators' licence unless and until they are allowed to provide entertainment services, but it would welcome comments on whether any new operators should be allowed to convey both entertainment and telecommunications services. (Paragraph 8.16)

5.3 The proposal is divided into two parts, the first addressed to existing operators and the second to new operators. On the question of whether or not to lift the present restriction in the licences of BT, Mercury and certain other PTOs on the conveyance of entertainment services in their own right, a majority of respondents disagreed with the proposal and supported an earlier lifting of the restriction. They argued that a continuing restriction would delay the introduction of new technology and innovative services and that, provided BT and the other PTOs were required to grant reasonable and non-discriminatory access to their networks, more effective competition could be expected to emerge.

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- 5.4 The cable companies, however, argued strongly against allowing telecommunications operators to convey entertainment services. Mercury took a similar view in respect of BT. The cable companies maintained that this would make it more difficult for them to compete effectively and could have a significant adverse impact on their ability to finance their planned investment. BT and possibly other PTOs could begin installing cables that would enable them to carry entertainment services. This would strengthen their negotiating position with the cable companies. Where a PTO agreed to convey a cable company's entertainment service it might not be prepared to convey the company's telecommunications service since it would then be competing with itself. This could discourage some cable companies from competing in the provision of telecommunications services.
- 5.5 The Government made clear in the consultative document that it wished to see effective competition in the provision of facilities as well as services. One of the main opportunities for the development of such competition at the local level, particularly in respect of wireline, as opposed to radio, networks, is through cable television companies. While there may be room for debate as to the degree of risk to those companies' investment plans if the restrictions on the PTOs conveying entertainment signals were to be lifted, the Government's conclusion is that the potential benefits are not sufficient to outweigh that risk. The Government believes this conclusion is supported by the additional arguments adduced by the cable companies as noted above. In reaching this conclusion, the Government has noted carefully the stated intentions of the cable companies regarding the provision of telecommunications services.

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- 5.6 A further consideration which the Government has taken into account is the extent to which BT, Mercury and Kingston Communications can already carry entertainment signals. The licence restriction relates only to the final drop to a residential customer. As noted in paragraph 5.1, the PTOs can already convey entertainment signals to business customers and within their networks. Thus BT is a major distributor of television programmes from studios to the transmission stations of the BBC and National Transcommunications Ltd. Furthermore, as stated in paragraph 8.10 of the consultative document, the PTOs can act as agents of the cable companies to convey signals to and from the customer provided that the cable company retains the ultimate responsibility or control.
- 5.7 The Government does not intend to remove the present restriction on BT, other national PTOs and Kingston Communications from conveying entertainment services in their own right until ten years after the publications of this White Paper. The Government would be prepared to reconsider the position after seven years if the Director General advised that removing the restriction would be likely to promote more effective competition in telecommunications.
- 5.8 The second part of the proposal in the consultative document sought comments on whether any new operators should be allowed to convey both entertainment and telecommunications services. There were few specific comments on this, reflecting perhaps the feeling that, at least in the short term, whether or not a new operator was able to convey entertainment services would make little practical difference. The comments that were received tended towards allowing such conveyance. 5/...

5.9 The arguments set out above in relation to maintaining the present restriction on the national PTOs do not apply in the case of new operators who do not have existing systems. In particular, allowing such operators to convey both entertainment and other telecommunications services should encourage rather than deter the development of competing local networks.

(5.10 to 5.11 deleted)

5.12 Any applications from new network operators for licences to offer telecommunications services may include proposals for carrying entertainment services. Such licences will not, however, permit the running of SMATV systems that do not require a licence under the Broadcasting Act.

Provision of cable entertainment services under the Broadcasting Act

5.13 The proposal in the consultative document was that:

The Government is inclined:

- a. *to make a commitment at the completion of the present review that it intends, ten years from that date, to allow BT and other national public telecommunications operators to provide entertainment services nationally over their main networks;*

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- b. to be prepared to reconsider this commitment after seven years in the event that the Director General advises that, allowing BT or other national public telecommunications operators to provide entertainment services over their main networks as from a date earlier than ten years would be likely to promote more effective competition in the provision of telecommunications as well as entertainment services;
- c. to leave to be decided nearer the time the terms and conditions on which national public telecommunications operators would be allowed to provide entertainment services; and
- d. in the meantime, to allow the parents, subsidiaries and associates of national public telecommunications operators, but not such operators themselves, to tender for any local delivery franchise advertised by the Independent Television Commission, including in principle, any over-franchising of present cable areas. (Paragraph 8.41)

5.14 This proposal produced a wide range of responses. Cable operators maintained that BT should not be allowed to provide entertainment services in cable franchise areas for 15 years, ie until the initial cable franchise in most areas had expired. By then cable operators emphasised that even without the entry of BT their expected return on investment over 15 years was uncertain. Entry on a nationwide basis in ten years could also have the effect of deterring any investment in unfranchised local delivery areas. The proposal for a review after seven years was seen as adding to the uncertainty.

7/...

5.15 Some respondents endorsed the ten year moratorium as representing a fair balance between the conflicting interests. Others, however, were concerned that ten, or even seven, years was a long time in the rapidly changing telecommunications market and that such a moratorium set now could delay technological developments and thus innovative services to the customer. Several respondents repeated the points made in the consultative document that if the national PTOs were automatically allowed to provide entertainment services across the country this would represent a significant advantage over any other prospective cable operators who would have to tender for licences area-by-area from the ITC, and that BT already had the right to apply for cable/local delivery franchises by means of an associate company but had recently decided to withdraw from the market. There was little detailed discussion as to what terms and conditions should be imposed on the national PTOs but many respondents said that they should be the same as those placed on local delivery operators by the ITC.

5.16 The Government has set out its policies for broadcasting in the Broadcasting Act 1990. Allowing BT or any other PTO to provide entertainment services nationwide at some point in the future would be a major departure from these policies. The Government agrees that the effect of regulation should not be to deter innovation. Indeed, it hopes that, by encouraging competition, it can accelerate the commercial adoption of new products and services. As noted in paragraph 5.6, the PTOs already have considerable flexibility in the conveyance of entertainment signals.

- 5.17 The Government recognises that allowing BT to provide entertainment services in ten years' time may deter investment by cable operators. Moreover it does not consider that it should make an commitment about BT's entry into the market any further into the future. The assumption should rather be that BT and other PTOs will not in general be allowed to provide entertainment services except by means of subsidiaries and other associate companies applying through the usual ITC procedures.
- 5.18 The Government does, however, believe that an exception should be made in the cases of areas which lie outside cable franchises and continue to be unfranchised after the local delivery service regime has run for some time. It is arguable whether such areas could ever be served by a truly "local" provider of entertainment services. The Government therefore proposes that in three years' time BT and the other national PTOs be given the opportunity to apply in their own right for local delivery service licences covering the then unfranchised areas.
- 5.19 The Government intends:
- a. to allow the parents, subsidiaries and associates of national public telecommunications operators, but not such operators themselves (other than at b.), to tender for any local delivery franchise advertised by the Independent Television Commission, including any over-franchising of present cable areas;
 - b. from 1 April 1994, to allow the national PTOs to tender in their own right for a local delivery service licence for any part of the country not at that time covered by a cable or local delivery licence. Any such application would fall to be considered under the normal ITC procedures as specified at that time; and 9/...

- c. not to allow the national PTOs to provide entertainment services nationally in their own right. This policy will not be reviewed for at least the next ten years. Thereafter the Government would expect only to review it if the Director General advised that a change of policy would be likely to lead to more effective competition in telecommunications.

The cabling Bells line up, but as friends or foes?

The regional Bell telephone companies and the major cable operators in the USA are making more and more moves towards encroaching upon each other's businesses. How far they go will to a large extent depend upon the regulators.

The two sets of companies could become the most deadly of competitors. There are also other options: acquisitions and partnerships are already taking place and more are likely this year.

Another option, the most extreme, is full-scale merger. Some senior analysts in the USA believe that a merger between one of the regional Bells and a major cable operator is a strong possibility by June.

US West, Pacific Telesis and Nynex are positioning themselves to compete or co-operate with the cable operators. Each plans to build a "full-service" broadband network within its own service area, enabling it to compete if it wants.

Ameritech

Home

1992 revenue: \$11.2 billion. Ameritech Bell Group serves 12 million customers in Illinois, Indiana, Michigan, Ohio and Wisconsin. It has interests in mobile telephone and paging and audiotex.

It asked FCC in February to let it provide long-distance and cable television services in return for opening up its local loop to competition.

Overseas

Minority interest in New Zealand terrestrial pay-television operator Sky Network. A 34-per-cent partner in New Zealand national telephone company, Telecom Corporation of New Zealand (consortium includes Bell Atlantic). Voice-mail services in the UK, Japan and Canada. Constructing nationwide cellular system in Poland in partnership with France Télécom and Telekomunikacja Polska.

Bell Atlantic

Home

1992 revenue: \$12.6 billion. Bell Atlantic serves 18 million customers in New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia and Washington DC. It has cellular and paging interests.

Proposing to build two cable-type systems in New Jersey, which could deliver 1,500 channels of interactive video, and to lease capacity to cable-television operators in response to FCC video dialtone ruling. Challenging 1984 Cable Act, which stops

US West, so far, has been co-operating. It is working with the country's largest cable operator, TeleCommunications Inc (and with American Telephone and Telegraph) on a video-on-demand experiment in their headquarters town of Denver. US West has also been talking to potential partners, including Time Warner, about building full-service networks outside its area.

The telephone company partners TCI in the second biggest cable operation in the UK.

Analysts believe that the US broadband moves by US West and TCI could lead the companies towards a US partnership, regulators willing.

Bell Atlantic is opting, for the moment at least, for competition. It will build two fibre networks in New Jersey, one to be run by a company competing with the existing cable television operator. This and other aggressive moves suggest to some analysts that it is a

telephone companies from providing video services. It announced experimental ADSL system to its employees in a Washington suburb. Seeking partners, including MSOs and programmers.

Overseas

It has just under 30 per cent of New Zealand national telephone company Telecom Corporation of New Zealand (consortium includes Ameritech). Joint ventures to modernise Czech telephone network; and to construct Czech national cellular system and public-switched packet-data network (US West a partner). It has co-operative agreements with telecommunications bodies in Brazil, Taiwan and Korea.

Bell South

Home

1992 revenue: \$15.2 billion. Serves 18.1 million customers in nine states. It has cellular and paging interests. Started testing optical-fibre system delivering cable TV programming in Heathrow, Florida in 1988.

Overseas

Minority equity stake in French cable television network Communication-Développement, which has majority stake in 22 franchises covering 2.1 million homes. A 12.5-per-cent stake in France Télécom Mobiles Data mobile data-transmission network and has announced a similar project in the Netherlands. It bid for UK cable-TV franchises but pulled out before franchise applications were decided.

It is a partner (with Compagnie Générale des Eaux) in

stalking horse for all the Bells. Legislators, meanwhile, have introduced a bill to permit the Bells to offer cable television in their own areas in direct competition with the MSOs.

Another Bell, Southwestern, will become the first to operate a US cable television company if it gains regulators' approval for its \$650 million purchase of Hauser Communications franchises in the Washington, DC area.

The Bells have traditionally been seen as over-bureaucratic and slow to respond to new threats and opportunities. This has changed and one important factor has been the experience of working in highly competitive foreign markets. The Bells have been using these as training grounds for their executives, whose experience will be important back home.

The Bells are becoming more streamlined, quicker to act and readier to risk money in new ventures. They also have two strategic advantages over the MSOs: the large capital reserves necessary for taking advantage of the new technologies and the good-will of Vice-

Cofira, French consortium operating a nationwide cellular network. Also involved in cellular projects in Denmark, Germany, Uruguay, Chile, Argentina, Mexico, Venezuela, Australia and New Zealand. A 24.5-per-cent partner in Optus Communications consortium (which includes Cable & Wireless), competing with Australia's local carrier, AOTC. Optus is backing Australian satellite-television project. Paging interests in UK, Switzerland and Australia. Other interests in China and India.

Nynex

Home

1992 revenue: \$13.16 billion. Nynex serves 12 million customers in New England and New York. It has cellular interests.

Plans to upgrade its system to offer broadband telecommunications services.

Plans to carry business television for Dow Jones in New York city via its optical-fibre network.

Overseas

UK: Wholly owns 19 cable-television franchises, with 2,738,000 million homes, having gone through a massive expansion in the last few weeks. Offers telephony in Portsmouth, Brighton and Bromley. Proposing to offer PCN services.

Upgrading Gibraltar's domestic telephone network. Will build and run new telephone network in Thailand, and is expanding Indonesian telephone network. Involved in cellular in Japan, Germany, Ireland and Taiwan. Provides project-management,

President Gore. The new administration is making moves to implement its proposals for the "information superhighway" which offers big business for telecommunications companies.

As the telephone companies threaten to carry cable services, over their core networks or cable systems proper (with the prospect of video-on-demand services), so the cable operators are threatening the Bell monopoly over local telephone services.

Four MSOs have a stake in Teleport, the largest bypass carrier. Time Warner's full-service digital network planned for Orlando, Florida will offer not only home telephony but services beyond the capability of a conventional telephone system, such as video phones. The MSOs have still to find a way of paying for the new technology. They must also ensure they do not get distracted by potentially time-consuming legal challenges to last year's Cable Act.

In this special survey, *New Media Markets* shows how the Baby Bells are preparing themselves at home and abroad for what will be a bumpy ride.

planning or consultancy services in the UK, France, Malaysia, Philippines, China and Australia. Exploring other deals in Asia.

Pacific Telesis

Home

1992 revenue: \$9.9 billion. Pacific and Nevada Bells serve 11 million customers in California and Nevada. It has cellular, paging and vehicle tracking services. Pacific Bell plans to build a broadband network to reach all its customers by 2015.

In December, board approved plan to split the group into two companies, a regulated local phone company and an unregulated company handling cellular, paging and other systems in the USA and globally. Will take one year to implement after regulatory review.

Overseas

UK: Four cable television franchises with 226,000 homes. Selling all franchises to concentrate on cellular telephone and paging systems, aiming to create pan-European network.

It has cellular interests in Germany, Portugal and Japan and paging interests in Portugal, Spain and Thailand. It is involved in Public Access Mobile Radio in France with Bouygues. Other interests in Japan (with Cable & Wireless) and South Korea.

Southwestern Bell

Home

1992 revenue: \$10 billion. Southwestern Bell Telephone serves 9.7 million customers in Kansas,

Texas, Missouri, Oklahoma and Arkansas. It has interests in cellular telephony, telecoms equipment and paging (paging subsidiary to be sold, pending regulatory approval).

Bought the Hauser Communications cable television systems in the Washington DC area for \$650 million in February (pending regulatory approval). The systems serve 225,000 subscribers. This is the first purchase in the USA by a Baby Bell of an MSO.

Bell's area overlaps two Cox Cable television franchises in Oklahoma City, Oklahoma and Lubbock, Texas.

Overseas

UK: Seven cable-television franchises, 1.2 million homes, 810,000 equity homes (with Cox Cable taking 25-per-cent stake in February.) Offers telephony via Mercury. Hopes to buy more UK franchises. Proposing to offer PCN services.

Mexico: 10-per-cent equity stake in Teléfonos de México (Telmex) with France Télécom. **Israel:** 50-per-cent stake in Golden Channels cable television, with franchises serving 380,000 homes. Pitching for cellular licence in São Paulo and 51-per-cent stake in Uruguayan state telephone operator ANTEL.

US West

Home

1992 revenue: \$10.3 billion. US West serves 25 million customers in 14 states. It has interests in cellular, paging and business communications systems.

Will overbuild entire network with optical-fibre system capable of carrying broadband video. Looking for partners to build such networks outside its service area. Talking to Time Warner and others.

Working with TeleCommunications Inc (TCI) and AT&T on video-on-demand project in Denver to test

consumer demand for such a system and the economics of building it.

Overseas

UK: 50-per-cent partner (with TCI) in TeleWest, which has stakes in 16 franchises covering 2.8 million homes and 2 million equity homes. Partners include Comcast and Compagnie Générale des Eaux. Has talked to other franchise operators (including Insight) about taking further stakes. All TeleWest franchises will offer telephony and carry out own switching.

Other cable-TV joint ventures:

With TCI/United International Holdings/Discount Investment Corporation: Tevel (Israel), franchises of 210,000 homes.

With TCI/Time Warner/UIH: Kabelkom (Hungary), franchise of 300,000 homes.

With TCI/Time Warner/UIH/Kinnevik: Kabelvision (Sweden), franchise of 610,000 homes.

With TCI/UIH: Norkabel (Norway), franchise of 225,000 homes.

It is a partner in France in Lyonnaise Communications, which has 11 cable-TV franchises covering 2 million homes. It was a partner of winning cable/pay-TV franchisee in Hong Kong, but the consortium handed back licence.

Cellular interests in Hungary, Czech Republic and Slovakia (Bell Atlantic a partner) and Russia (US telecoms company Millicom a partner). Digital cellular interest in Japan.

In the UK, it has a 50-per-cent stake, in partnership with Cable and Wireless, in the Mercury One-2-One personal communications network. It has telephone-network interests in Russia and Lithuania, and is bidding for 30 per cent of state operator Hungarian Telecommunications Company. Partner with France Télécom in information services.

TELEPHONY

BT changes heart over publishing tariffs

BT has changed its mind about publishing interconnect tariffs for its competitors. The company, which said last month that it would not release details of pricing, now says that it will.

The decision comes amid fears that a refusal to disclose prices could prevent the company from succeeding in its bid to win the right to operate an international telephone service from the USA.

BT's initially said that it would not publish tariffs after it emerged that the Office of Telecom-

munications had decided — contrary to its original position — to require BT to publish only the methodology behind interconnection deals rather than the prices themselves. This requirement is included in the amendments to the BT licence which Oftel published on March 9.

BT's position was that it saw no need to go beyond this minimum requirement. But this appeared to conflict with the company's assurance about the publication of interconnection agreements which was set out in the licence application that it had submitted to the US Federal Communications Commission on March 8. The discrepancy underlined the risk that a policy of non-disclosure could jeopardise BT's chances of getting the FCC to approve its application.

The danger has now led to a change of heart. BT said this week that it has a "firm policy to publish the

Time Warner and US West: Mating of the dinosaurs

This week's deal under which Time Warner will sell a 25.5-per-cent stake in Time Warner Entertainment, which includes the media group's cable systems and channels and film studios, to the regional Bell telephone company US West is the biggest deal so far in the convergence between the US cable and telephone industries.

Analysts and cable industry financiers say that the \$2.5 billion deal provides a range of benefits for both companies which will put them in a stronger position to fight potential competitors.

Of US West's investment, \$1 billion will go towards the building of 25 broadband "full service networks", with at least 150 channels, in Time Warner's metropolitan franchises, capable of delivering a wide range of video, telephony and interactive services to subscribers.

One senior analyst described the Time Warner/US West deal as "two dinosaurs mating", in that each party is a large company facing the loss of a monopoly advantage in its markets.

Analyst Rich MacDonald of Wasserstein Perella Securities said that the move was a pre-emptive one on the part of Time Warner, the USA's second-biggest multiple systems operator. "Its cable systems are the most vulnerable to potential competition from the phone companies, because they serve large markets and have attractive

demographics," he said. "This deal gives Time Warner a head start in getting access to the skills, technology and equipment it would need to defeat a potential entrant to the market."

Both Time Warner and US West will benefit from pooling resources, said MacDonald. The telephone company will be able to offer expertise in billing, switching and maintaining system reliability, while the MSO will offer expertise in programming and marketing.

John Waller, chairman of Waller Capital Corporation, said that there will also be savings for the partners. For instance, telephone companies already lease fibre-optic capacity from cable operators for data transmission for their business customers. US West will be able to save on such expenditure.

Waller said that US West is also looking over its shoulder at the prospect of greater competition on its home patch: "In the future, the long-distance phone companies will compete with the regional phone companies for regional business. The regional companies will be stronger if they cooperate with the cable operators and can offer more services."

Time Warner was a more attractive partner for US West than the USA's biggest cable MSO TeleCommunications Inc, even though TCI partners

Continued on Page 4

third bad debt and two-thirds people moving house.

TeleWest says that BT representatives have been misrepresenting the cable operator's tariffs, its financial stability and the quality of its service in its Edinburgh franchise.

Scott Ferris, TeleWest's director of marketing and planning, said that BT staff had told people that TeleWest charged a higher line-rental than BT for customers taking only the cable-telephony service and not also a television service. But this was only the case because BT was incorporating the cost of an optional enhanced feature, call divert, in TeleWest's charge. The £2 cost made the TeleWest charge £1 more expensive than BT's charge.

BT staff, it is alleged, have also told people that a local call on the TeleWest cable-telephone system is more expensive than with BT. TeleWest says that, although some individual calls could be cheaper with BT, "on average, we give customers a saving of between 10 per cent and 15 per cent. We don't profess to save customers money on each call."

Ferris said that BT staff also questioned the financial stability of the company because it is American.

TeleWest notified Oftel of the incidents and complained to the local BT manager. It says that the misrepresentation has now stopped. BT said this week that it could not comment on the TeleWest accusations because it had not received any official complaint. However, it said that its local cheap tariff throughout the country was often cheaper than that of its competitors.

General Cable says that BT circulated leaflets in newly-cabled areas of its Bradford franchise earlier this year containing several misleading claims about cable telephony. General Cable complained, through its solicitor, to BT and informed Oftel.

Marc Noblet, managing director of General Cable, said that his company had not made an official complaint to Oftel because "we would lose credibility if we went to Oftel too quickly." He said that, if there were further and more serious problems with BT, General Cable would consider taking legal action and making official complaints to Oftel and the Office of Fair Trading.

BT set up its first cable defence team on a trial basis in TeleWest's Avon franchise, but teams have now

Dinosaurs marry to protect and expand their markets

Continued from Page 3

US West in cable ventures in the UK and Europe. The areas covered by TCI and US West overlap very closely, whereas only 85,000 of Time Warner's seven million cable subscribers are in the 14 states where US West operates.

The Baby Bells are not allowed to hold stakes in cable operators which operate in their service areas and Time Warner will now sell its systems in the US West area.

US West will gain access to such major Time Warner markets as New York City (910,000 subscribers) and Central Florida (475,000), and Time Warner will gain access to US West's 14-state area, in which the telephone company plans to overbuild its existing system with optical-fibre and offer video entertainment services, if and when legislation is passed to enable it to do so.

Time Warner sees the full service networks in its metropolitan franchises as offering new outlets for Warner Bros product through video-on-demand. This will generate new revenue streams for the cable operation — which is anxious to find new streams not subject to rate regulation — and the film studio. Investment bankers Goldman Sachs predict that full service networks will spur substantial growth in revenues for the Hollywood studios (see separate story).

Time Warner Entertainment comprises the Warner Bros studio, cable channels such as Home Box Office, and Time Warner Cable. The deal gives Time Warner 63.27 per cent and US West 25.51 per cent, with the Japanese companies Toshiba and Itochu holding the rest. US West has an option to buy a further 8.5 per cent from Time Warner if it meets several conditions, including improving the cash flow from Time Warner Cable.

been set up in most areas where cable telephony is offered. Their aim is to prevent customers opting for cable telephony. If customers do opt for it, the aim is to get them to change their minds.

But, as the internal *BT Today* magazine points out: "Once lost to cable, it can be extremely difficult to win back a customer, which is why BT's efforts are directed at reaching customers before they switch."

A cable operator must, under the 1991 Roads and Streetworks Act, give BT (and other utilities) three months' notice of where it intends to build. BT takes advantage of this period of notice to target marketing efforts on areas which will soon be cabled and offered a telephony service.

BT uses a mixture of local advertising and direct mailshots to tell customers of its products and its special offers. It also sends out a fact sheet comparing BT's service with that of the local cable company and encouraging people to ask key questions of cable sales staff. This tells customers that they should stay with BT because "BT is the tried and tested communications provider."

The sheet says that with many cable operators "you pay a higher line rental if you only take their telephony service, compared to the cost of an overall TV and telephony package."

It points out that cable companies say that they will be cheaper than BT, but that this is not always the case; that customers will lose their existing telephone number if customers switch to cable telephony; that BT is reliable and provides a customer-service guarantee; that customers will be unable to use their BT Chargecard if they switch to cable; and that BT

has special services such as malicious-call bureaux and billing in braille.

The fact sheet draws attention to one of the company's general special offers, Option 15, whereby, at a cost of £4 a quarter, a customer receives a discount of 10 per cent on call charges where the quarterly bill for calls is more than £40.

When customers call BT and say that they want to disconnect and opt for cable telephony, BT staff try to dissuade them. If customers cannot be dissuaded, they are told that if they return to BT within 12 months they will pay only a minimum reconnection charge of £31.30 and may well be able to have their old number back.

Cable operators and industry executives also believe that BT is trying to slow down the rise in cable telephony by seeking to boost the satellite-dish market through its own DTH dish sales, starting this autumn. Customers may well be reluctant to take cable if they have just bought a dish.

Cable operators say that they generally convert most dish homes to cable. However, if BT succeeds in expanding the dish market — which BT believes it will do — cable operators would have to tackle many more dish homes.

BT's sale of satellite dishes also puts the company into the business of delivering entertainment into the home (though it does this in a limited way through its broadband franchise in Westminster). It would like to provide entertainment over its main network but cannot do so until at least 1998. Dish sales will at least give it some experience in marketing home entertainment.

MARKETS

Telecommunications Deals Fuel Surge in U.S. Mergers

By RANDALL SMITH
Staff Reporter

NEW YORK — It's rush hour on the information superhighway, and that is fueling the first big increase in U.S. merger-and-acquisition activity in five years.

This year has seen a flurry of deals in which telecommunications companies and cable TV concerns have been scrambling to form alliances for future growth against a backdrop of expected rapid technological change.

As a result, the value of announced U.S. deal activity through June 11 has risen 29% this year from the 1982 period, according to Securities Data Co. The last time announced deal activity rose for a full year was 1988. But this year's activity — \$68.1 billion of deals announced — is running at less than half the 1988 rate.

In two of this year's largest deals, British Telecommunications PLC is paying \$4.3 billion to acquire a 20% stake in MCI Communications Corp., the long-distance carrier. And US West Inc., the regional telephone company, is shelling out \$2.5 billion for a 26% stake in an entertainment subsidiary of Time Warner Inc. with holdings in movies, records and cable TV.

Considerable Activity

"There is a considerable amount of activity in communications, telecommunications, the whole information services area, and I think that is going to continue in a very dramatic way," says Richard Beattie, chairman of the executive committee of Simpson Thacher & Bartlett.

"What's happening is just a convergence of the technological changes and people coming to realize that information services and communications are going to occur in a much different way," said Mr. Beattie, who represented MCI in the British Telecom deal. He also represented the New York Times Co. in its proposed \$1 billion acquisition of Affiliated Publications Inc., announced Friday.

Richard Fisher, chairman of Morgan Stanley Group Inc., told reporters after the firm's annual meeting last week that his firm is busier in mergers activity than it has been in three years. "It's not the feverish pitch of the 1980s, but it's been really good," he said.

MCI Chairman Bert C. Roberts Jr., speaking at lunch Tuesday with editors and reporters of The Wall Street Journal, said that information services and telecom-

munications are being "redefined as something broader than what we know it as."

Cable, wireless, and wireline communications are "all going to start to interact in different ways," Mr. Roberts said. "It's all going to blend together in terms of the way you do things. And we're trying to position MCI in the middle of that."

'Hottest Deal Area'

Jack Grubman, a telecommunications analyst at PaineWebber Inc., said, "It's ironic that what's been considered a boring utility industry has been the hottest deal area for the last three years." The \$7.9 billion acquisition of NCR Corp. by American Telephone & Telegraph Co. and the \$6.2 billion merger of GTE Corp. and Centel Corp. were the two largest U.S. deals of 1991. And Sprint Corp.'s \$3 billion acquisition of Centel Corp. was one of the largest of 1992.

One of the catalysts for the latest flurry of deals was an announcement last November that AT&T is negotiating to acquire a 33% stake in McCaw Cellular Communications Inc. for \$43.73 billion, positioning the long-distance giant to offer local phone services eventually.

Mr. Roberts of MCI said the proposed AT&T-McCaw alliance has sparked a greater willingness by the seven regional Bell operating companies to consider alliances of their own to counter what they see as "a real threat" by AT&T to their local phone service. MCI, he said, may forge competing cellular alliances of its own with some of those local phone companies.

Mr. Roberts added that if the AT&T-McCaw talks — which so far have failed to produce a definitive agreement — falter or collapse, MCI might be willing to use some proceeds of the British Telecom stock sale to invest in McCaw. But a McCaw spokesman said that's not likely, since McCaw Chairman Craig McCaw met with AT&T Chairman Robert Allen Tuesday and the talks are "making good progress."

The current deals are different than the debt-financed megadeals of the late 1980s. With the stock market trading near record levels, many acquirers are using their own stock as financing. And several deals — including the investments in MCI, Time Warner and McCaw — are for partial stakes, leaving takeover stock traders without the chance to cash in on premium offers for all the companies' outstanding shares.

West sets course for Eastern Star

Hong Kong-based Hutchvision's Star TV satellite service today dominates the lucrative Far East market. But with the region's economies booming, Western media giants are lining up for a slice of the action

by Paul Dempsey

Asia and the Pacific Rim has become satellite television's new battleground. Economies are booming, providing the money to fund the services, and leading media groups are rushing to meet the almost universal demand for more consumer goods, including satellite television.

Last week, Rupert Murdoch's News Corporation became the latest company to stake its Asia claim by paying \$230 million (£153 million) for a 22 per cent stake in Hong Kong broadcaster Television Broadcasts, the world's largest producer of Chinese-language programming.

It joined a growing list of international media giants that already included Time Warner, Telecommunications Inc, the BBC, Turner Broadcasting and Capital Cities/ABC. Carlton Television, the ITV broadcaster, emerged this week as another of those keen to board the Asia bandwagon. Its chief executive Nigel Walmsley has also had talks with TVB in Hong Kong, and the company is looking at other investment opportunities throughout the region. "It is the largest market in the world and the rate of economic growth has been very dramatic," he said.

Yet this "greenfield" satellite market has been dominated by local company Hutchvision, controlled by the family of Hong Kong's richest man, Li Ka-Shing, and his Hutchison Whampoa conglomerate.

Its six-channel Star TV operation - Star stands for Satellite Television Asian Region - claims to reach more than 11 million homes in 38 countries from the Middle East to Japan via the Asiasat 1 satellite.

The BBC and Viacom decided to back Star within months of its

August 1991 launch. Both World Service Television and MTV Asia have now become key parts of Hutchvision's package, and rivals believe Viacom plans to add Nickelodeon; its children's channel, in the near-too-distant future.

From the West, they have been joined by Prime Sports, a channel from the Denver-based Prime Network, a major producer of sporting events. From the East, Zee TV, a Hindi "associate" service, and Hutchvision's own Mandarin-language Chinese Channel and English-language Star Plus entertainment channel complete the current Hutchvision line-up.

The companies which joined the package early have got good deals from Li Ka-Shing. In the case of BBC WSTV, Star picks up all the distribution and marketing costs over Asia, while the BBC stands to get a share of Hutchvision's overall profits.

But elsewhere there is little love for the market leader. Li Ka-Shing just doesn't seem to believe he needs that many Western partners or that they will make his business more efficient. Some of them, in turn, claim his company is "arrogant".

Murdoch, for example, has been looking to take a stake in Star for the last few months. But Hutchvision has not been willing to "accept" the level of managerial advice on offer from News Corp. Similarly, Pearson, one of Murdoch's BSKyB partners, has found its negotiations awkward. But Star is in a strong position because it is not likely to fall short of cash.

Li Ka-Shing's personal fortune has been estimated at \$5.8 billion (£3.9 billion) by *Fortune* magazine, and with positive growth forecast for Hutchison Whampoa's core trading and telecommunications business, he seems happy and able to fund Star's rapid expansion plan solo.

That plan includes the launch of as many as six pay-television channels over Asia by the end of next year.

It covers the launch of the first consumer-oriented signal compression system by the end of this year, and the purchase of a third satellite from the Chinese AptStar consortium to add to the 18 transponders it is already set to control when Ariasat 2 launches next year.

Li Ka-Shing's rivals' response has been to set up their own package, mostly made up of normally competing US satellite channels with Asian ambitions - CNN International, TCI's Discovery, Time Warner's HBO Asia, Capital Cities' sports service ESPN and TVB's planned Mandarin-language Super Channel.

This group will expand, even if only within the ambitions of its founders at first. TCI is also an investor in the planned Asian Business Network financial channel, and parent Turner Broadcasting System has long-term plans to add its TNT entertainment channel and The Cartoon Network.

Initially, these channels plan to use a less attractive satellite, Palapa B2p, which loses out to Star's Asiasat in the main Chinese and Indian markets. Instead, they pin their hopes on a clutch of new "birds" due for launch over the next 18 months, including AptStar, Thaisat and an Asian PanAmSat.

This gamble - that Asiasat, part-owned by Hutchison Whampoa and exclusively set aside for Star-contracted channels, has not established the same atomlock over regional satellite distribution that Astra and its rival BSKyB, have in Europe - could come off, if the alliance can get other Asian companies on board alongside TVB.

Such partners are available. Asian countries are placing greater commercial demands on state broadcasters, forcing them to look at satellite, cable and other methods of distribution. This strategy suggests that the unnamed rival group has virtually abandoned the possibility of striking a deal with Star.

As evidence, one senior executive from the Western alliance deviates from the normal corporate US line of keeping all options open, when asked if some agreement with Hutchvision is inevitable in the longer term. The answer is a blunt "No".

"Star has done a terrific job in building up the Asian market from scratch, you cannot deny that. But it appears to want total control over what does and does not appear on the screen, and if you do appear, it happens entirely on Star's terms," he claims.

With those new satellites all coming into play over the next 18 months, the battle for Asia should soon be decided one way or the other.

'Star has undoubtedly done a terrific job in building up the Asian market from scratch, but it appears to want total control over what appears on the screen'

