OLO Report No. 89-5

February 13, 1990

Montgomery County Government

A STUDY OF THE RELATIONSHIP BETWEEN THE COUNTY GOVERNMENT AND MONTGOMERY COMMUNITY TELEVISION, INC.

Office of Legislative Oversight

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Tables

EXECUTIVE SUMMARY

As directed by Council Resolution 11-1504, this report by the Office of Legislative Oversight examines the structure of the relationship between the County Government and Montgomery Community Television, Inc.

Montgomery Community Television, Inc. (MCT) is a non-profit, tax-exempt corporation established in 1984 to manage two of the 13 access channels reserved for public, educational, and governmental use under the terms of the County's cable franchise agreement. Under contract to the County, MCT's current responsibilities include producing a daily local news program, promoting the public's access to and use of cable television, training community producers, and providing technical support for the County Government Channel. MCT receives funding on a non-competitive basis from the Cable TV Special Revenue Fund.

The report finds that, during the past three years, County Government and MCT officials have disagreed on fundamental structural issues such as the terms of MCT's contract, the method of fund disbursement, and the specifics of MCT's accountability to the County. These disagreements have hindered the formation of a constructive working relationship between the County and MCT. The report analyzes why disagreements developed, and identifies the basic issues that need to be resolved.

The report recommends a package of recommendations that balance the need for the County Government to effectively oversee the expenditure of grant funds appropriated to MCT; and the need for MCT to continue to operate free of government control over programming content, and to be perceived as fair and impartial in its programming decisions and interactions with the community.

The report recommends that this balance can best be achieved by continuing to subject MCT's funding to the annual Cable Plan and appropriations process, but also by providing most of the County's financial support to MCT in a three-year, fixed price contract. The report recommends that this contract not include any requirements for MCT to produce particular programs, but should continue to require MCT to provide the County with regular and complete reports of activities and expenditures, and should allow for the County to conduct a performance evaluation of MCT's operations during the second year of the three-year contract.

The report also recommends that the County's cable law be amended to outline the essential characteristics of all access channel operators, and recommends deletion of the current requirement for Council and Executive approval of changes to MCT's bylaws and articles of incorporation. In addition, the report recommends that informal communication between the County and MCT be improved, and that the MCT Board of Directors develop a long-range business plan for MCT that is shared and discussed with the County.

I. AUTHORITY, SCOPE, AND METHODOLOGY

A. Authority

Council Resolution 11-1504, Amendment to the CY 1989 Work Program of the Office of Legislative Oversight (OLO), adopted June 20, 1989.

B. Scope

As outlined in Council Resolution 11-1504, a copy of which is included as Appendix A, the purpose of this study was to:

- Examine the structure of the relationship between the County Government and Montgomery Community Television, Inc. (MCT), with emphasis on the financial arrangement that has evolved over the past five years; and

- Recommend, as needed, administrative, legislative, and/or other changes to ensure that the County Government is able to exercise an appropriate degree of oversight over MCT without infringing upon MCT's ability to operate as a private, independent, non-profit corporation.

C. Methodology

This study was conducted during September-December 1989 by Karen A. Orlansky, OLO Program Evaluator, with assistance from Ari J. Sky, OLO Public Administration Intern. It involved document and file reviews, interviews, and a phone survey of public access providers in 13 other jurisdictions.

Within the County Government, interviews were conducted with staff from the following departments and offices: the Cable Office; the Office of Management and Budget; the Department of Finance; the Office of the County Attorney; the Office of Public Information; the Department of Addiction, Victim, and Mental Health Services; the Department of Family Resources; the Office of Economic Development; and the Office of the County Council.

Other individuals interviewed included: members of MCT's Board of Directors; MCT's Executive Director and MCT's senior staff; MCT's auditors (Sullivan and Kreitzman, Certified Public Accountants); the President of Cable TV Montgomery; past and present members of the County's Cable Communications Advisory Committee; members of the Community Access Task Force (the group that issued a report in March 1984 on the structure of public access); the attorney who drafted MCT's bylaws and articles of incorporation; Maryland Public Television staff; and several former Council Members, who were serving on the Council at the time MCT was established.

D. Acknowledgments

Throughout this study, OLO received cooperation from all parties. In particular, OLO wants to acknowledge the many hours that Kay Stevens, Executive Staff Specialist in the County's Cable Office, and Ralph Malvik, Executive Director of MCT, spent providing information and working with OLO to generate constructive recommendations. The time spent by members of MCT's Board of Directors and members of the County's Cable Communications Advisory Committee (CCAC) was also greatly appreciated. The MCT Board of Directors allocated time for discussion with OLO at three meetings of the full Board, and at five meetings of MCT's Executive Committee. The CCAC allocated time for discussion with OLO at meetings of the full committee and CCAC's Community Programming Subcommittee.

II. ORGANIZATION OF REPORT

This report is organized as follows:

Chapter III, Definitions, defines how certain terms are used throughout this report;

Chapter IV, The History of Public Access in the County: From the 1970's through the Transfer of the Cable Franchise in 1986, provides an overview of the various studies and County Government decisions that led to the incorporation of MCT in September 1984; and describes the major developments that affected MCT through the transfer of the cable franchise from Tribune-United to Montgomery Cablevision Limited Partnership in November 1986;

Chapter V, The Structure of Montgomery Community Television, Inc.'s Relationship to the County Government, describes the structure of MCT's relationship to the County Government with respect to the following issues: MCT's mission; MCT's funding; the budget process; MCT's reporting requirements; and the conditions placed by the County Government on MCT in exchange for funding. This chapter also describes a number of other aspects of MCT's relationship to the County Government;

Chapter VI, Structural Issues to be Resolved, analyzes why disagreements concerning MCT's relationship to the County Government have developed, and identifies the major structural issues that need to be resolved between MCT and the County Government;

Chapter VII, Comparative Information, summarizes information gathered about the structure of the public access function in 13 other jurisdictions; and

Chapter VIII, Recommendations, outlines OLO's recommendations regarding the structure of MCT's future relationship to the County Government.

III. DEFINITIONS

Unless otherwise indicated, all code chapters and sections cited in this report are references to the Montgomery County Code, 1984, as amended. In addition, the following terms are used as defined below:

Cable Office refers to the Executive branch staff responsible for administering of the cable franchise agreement and overseeing the cable company's compliance with all elements of the franchise agreement. The Cable Office staff prepares and monitors implementation of the annual Cable Communications Plan, which allocates grant and settlement moneys provided by the franchisee. The Cable Office staff also provides staff support to the Cable Communications Advisory Committee. By action of the County Council in adopting the FY86 operating budget, the cable television franchise enforcement functions were transferred from the Office of Management and Budget to the Office of the Chief Administrative Officer, where they continue to be organizationally located today.

Cable Communications Advisory Committee (CCAC) is the advisory committee established on September 20, 1983, by Executive Regulation 20-83. The CCAC was created, pursuant to Code Section 8A-18(a)(7), to assist the County in oversight of the franchise agreement and to advise the County on the use of the cable system, the allocation of grants for public service, and on fees, rates, and charges to the public for use of the cable system. The CCAC is appointed by the County Executive and confirmed by the Council; and CCAC members are required to file public financial disclosure and political activity disclosure statements.

Chapter 8A, Cable Communications refers to Chapter 8A of the Montgomery County Code, 1984, as amended. This law, enacted October 29, 1980, established the procedures and standards under which the County would award and regulate cable communications system franchises. Chapter 8A has been amended nine times; Bill 26-89, titled "Cable Communications-General Revisions", introduced May 2, 1989, proposes comprehensive amendments to Chapter 8A; Council action on this bill is expected in 1990.

Community Access Task Force refers to an advisory task force composed of 21 members appointed by the County Executive and confirmed by the Council in November 1983. The Task Force was requested to produce a report and recommendations concerning the various alternatives for managing, promoting, and producing public access for cable television in the County. The Community Access Task Force completed its work and issued a written report on March 1, 1984.

Franchise means the right granted by the County to a company (known as the "Franchisee") to construct, maintain, and operate a cable system within all or specified areas of the County.

Franchisee means an entity granted a cable franchise under Chapter 8A, Cable Communications. The County's franchisee from May 25, 1983 until November 14, 1986 was Tribune-United Cable of Montgomery County. On November 14, 1986, the County entered into an agreement with Tribune-United and Hauser Communications, Inc. to transfer the County's cable franchise to Montgomery Cablevision Limited Partnership, an affiliate of Hauser Communications, Inc. (The operating name of Montgomery Cablevision Limited Partnership is Cable TV Montgomery, or CTM.)

Franchise agreement means a contract entered into in accordance with Chapter 8A, Cable Communications, between the County and the franchisee, that sets forth the terms and conditions under which the cable franchise will be exercised. The County entered into a franchise agreement with Tribune-United Cable of Montgomery County on May 25, 1983; the original franchise agreement was modified on November 14, 1986, in accordance with the Settlement Agreement (see definition below), when the franchise was transferred to Montgomery Cablevision Limited Partnership.

The Settlement Agreement refers to a written agreement between the County and Tribune-United Cable of Montgomery County entered into July 15, 1986. The purpose of the Settlement Agreement was to resolve outstanding claims and disputes between the County and Tribune-United. This agreement outlined proposed modifications to the original franchise agreement (entered into on May 25, 1983), and a proposed transfer of the franchise from Tribune-United to Montgomery Cablevision Limited Partnership, an affiliate of Hauser Communications, Inc. The Settlement Agreement also specified cash payments that Tribune-United and Tribune of Maryland (purchased by Montgomery Cablevision Limited Partnership on November 14, 1986) would pay to the County.

MCT refers to Montgomery Community Television, Inc., a non-profit (nonstock), tax-exempt corporation incorporated on September 5, 1984.

References to Different Channels and Types of Programming

Access or "PEG" channel means any channel* on a cable system reserved for public use, educational use, or governmental use without a charge by the franchisee for channel usage. ("PEG programming" refers to the full range of programming either locally produced or acquired for viewing on any of the PEG channels.)

Public access channel means any channel on a cable system on which any member of the general public may cablecast. The purpose of a public access channel is to provide a forum for community expression and the free exchange of ideas; to that end, a public access channel should be available on an open, nondiscriminatory basis to all residents and groups. As stated in the federal House of Representatives Report No. 98-934 on the Cable Franchise Policy and Communications Act of 1984:

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* Without the word "channel", the terms "public access", "educational access", and "governmental access" are broader terms that refer to all equipment, facilities, and services (including the channel capacity) that enable the access functions to operate.

"Public access channels are often the video equivalent of the speaker's soap box or the electronic parallel to the printed leaflet. They provide groups and individuals who generally have not had access to the electronic media with the opportunity to become sources of information in the electronic marketplace of ideas."

At present, Channel 49, known as "The Open Channel", is a channel operated by MCT as a traditional public access channel. Channel 49 is a non-commercial channel; all programming on channel 49 is either produced locally or sponsored by a local resident; and except for minimal restrictions (e.g., limitations on obscene and libelous material), MCT exercises no editorial control over programming content.

Government access channel refers to a cable channel that shows programming created by County or municipal government agencies. At present, Channel 55, known as "County Cable" is the County's government access channel. Programming shown on Channel 55 includes programs produced by Montgomery County government employees, and gavel-to-gavel coverage of County Council, Executive branch, and Planning Board meetings and public hearings. Under current contractual arrangements, MCT provides certain production services, playback services, input of text material, and equipment maintenance to support Channel 55 programming. In addition, the Cities of Rockville and Takoma Park, and the Montgomery County Chapter of the Maryland Municipal League are each allocated use of a government access channel.

Educational access channel refers to a cable channel that shows instructional or other programming produced by public educational institutions. At present, there are five educational access channels on the cable system in the County: two operated by the Montgomery County Public Schools, one operated by Montgomery College, and two planned to be operated by the University of Maryland.

Flagship channel was defined by the March 1, 1984, Report of the Community Access Task Force as one of several access channels expected to be managed by the public access corporation as "the channel carrying the best of all locally produced cable programming." (See definition of Channel 21 below.)

Channel 21—The Montgomery Channel is one of the channels on the County's cable system that is operated by MCT. MCT describes Channel 21 as a "community television" channel that includes some "local origination" programming. At present, programming on Channel 21 includes community-oriented programs obtained in one of three different ways: selected programs originally produced for viewing on any of the County's PEG channels (consistent with the original "flagship" concept); programs acquired from elsewhere by MCT to serve traditionally under-served groups (e.g., the hearing-impaired); and programs produced locally either by trained volunteers, or a combination of volunteers and MCT professionals. In contrast to a traditional public access channel, MCT exercises editorial control over program content and the selection of programs for Channel 21. At present certain programs on Channel 21 also contain advertising.

Local origination programming refers to locally-produced programming that is produced and staffed primarily by television professionals. In most jurisdictions, local origination programming is further defined as community-oriented programming created and sponsored by the franchisee. In Montgomery County, Channel 21, a channel operated by MCT, has been described by MCT as a channel that includes some "local origination" programming. (See description of Channel 21 above.) For purposes of the FY90 master contract executed between the County Government and MCT, "local origination" programming is defined as video programs where, on average, more than half of the production and technical crew are made up of paid MCT staff.

IV. THE HISTORY OF PUBLIC ACCESS IN THE COUNTY FROM THE 1970's THROUGH THE TRANSFER OF THE CABLE FRANCHISE IN 1986

A. Introduction

In the early 1970's, the County Government began to examine the issue of bringing cable television to County citizens. The potential benefits of public, educational, and government (PEG) programming on a cable system were discussed as part of the County's public debate over whether and how to proceed with granting a cable franchise. A review of the legislative files also indicates that significant attention was given to the structure of public access and its relationship to the County Government.

This background chapter is organized as follows:

Sections B through F provide an overview of the major studies and recommendations made concerning the structure of the cable television access function in the County, with an emphasis on the County Government's decisions that led to the incorporation of Montgomery Community Television, Inc. (MCT) in September 1984;

Sections G through I describe the incorporation of MCT, the funding of MCT in the FY85 Cable Plan with the intent of hiring a local programming contractor, the Amendment to the FY85 Cable Plan that allocated funds directly to MCT to operate the public access function, and the adoption of the FY86 Cable Plan; and

Section J describes the Settlement Agreement and the transfer of the County's cable franchise in November 1986 from Tribune-United to Montgomery Cablevision Limited Partnership.

The structure of MCT's relationship to the County Government since the transfer of the cable franchise is detailed in Chapter V of this report beginning on page 23.

B. The Discussion of Public Access Programming Preceding the Enactment of Chapter 8A, Cable Communications

In January 1973, a Citizens Advisory Committee to Study Cable Television was created by Council resolution. This 15-member Committee, appointed by the County Executive and confirmed by the Council, was directed to study and make recommendations on the potential benefits, costs, advantages, and disadvantages of cable television. Among the specific issues that the Council requested this Advisory Committee to address were the number of public channels to be reserved, and ". . . safeguards needed to preclude government control of programming content and communications utilization."*

The Advisory Committee helped the County's Office of Cable Television develop the scope of a cable-related consultant's study to be performed for the County Government. In late 1973, the consulting firm of Malarkey, Taylor and Associates (MTA) was retained by the County to conduct a "comprehensive feasibility study" to determine whether cable television would be viable for the County, and whether the cable franchise should be under public or private ownership. MTA was also requested to address the potential public service uses of a cable system.

The consultant's report, completed in 1975, recommended the construction of a cable system in the County under private ownership. MTA also recommended, however, that the system meet the Federal Communications Commission's minimum requirements for access channels, which in 1975 were to reserve one channel each for public, educational, and government access.** MTA recommended that these access channels be under public management. The report recommended against substantial development of "local origination" facilities, which MTA characterized as "unprofitable". Instead, MTA recommended that in the area of community-oriented programming, the County focus its efforts on providing local access channels to the public and encouraging public experimentation with local program production.

In June 1976, the County Executive's Report on Cable Television was completed. This report was an in-depth study of cable television by the County's Office of Cable Television, the Citizen's Advisory Committee to Study Cable Television, and a number of consultants. The primary recommendation of this report was for the County to proceed with the planning, design, and implementation of a privately owned and operated County-wide cable television system.

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* Council Resolution 7-1048, <u>Creation of Citizens' Advisory Committee to Study Cable Television</u>.

** In 1979, the Supreme Court ruled that this access requirement was unlawful based upon a finding that the FCC lacked authority to impose such requirements on cable operators.

The County Executive's 1976 Report on Cable Television recommended the creation of a County-owned and operated "Special Services Network" that would provide two-way video channel service among 40 public agencies and community service institutions. The report recommended creating a Citizens' Cable Television Commission to "safeguard the public interest in the areas of abuses, programs and services and subscriber rates", and establishing a County regulatory office both to administer the franchising process and to manage the public use of the subscriber and Special Services Network.

The debate over the best approach to cable television continued during the next several years. The County Government's first public commitment to including access opportunities on the cable system and to establishing a separate entity to support "community programming" was articulated in a joint County Council/County Executive resolution passed on July 22, 1980, titled "Politicization of Cable Television Franchisee Selection Process". Specifically, Resolution 9-912 stated that:

> ". . . community programming is a valuable potential of a cable system and should not be an issue of ownership of the cable system . . . A community-based institution, with assured funding, shall be established by the County to support and promote community programming in the County."

Several months following the passage of Resolution 9-912, the Council took final action on Bill 7-80, which proposed creating a new Code Chapter 8A, Cable Communications. Bill 7-80, enacted on October 29, 1980, established the procedures and standards under which the County would award and regulate cable communications system franchises. Bill 7-80 also contained the first local requirement that the County's cable franchise must have certain channels reserved for public, educational, and government (PEG) access use. Specifically, Sections 8A-11(b)-(d) required the County's franchisee(s) to maintain at least one channel each for public, educational, and governmental access. In addition, the legislation stated that further conditions for utilization of the PEG channels would be determined either by subsequent legislation or regulation.*

C. The County Plans for and Issues a Request for Proposal (RFP) for a Cable Communications System Franchise

As part of the preliminary franchising process, on October 7, 1980, the County Executive and County Council appointed 15 members of the public to serve on a Cable Television Advisory Committee. This committee was directed to work with Telecommunications Management Corporation (TMC), a consulting

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* Bill 6-77, which had proposed a similar cable franchising process, was introduced in November 1977 but never enacted; Bill 6-77 expired on July 1, 1980.

firm hired by the County to analyze major cable-related matters, and to offer recommendations regarding the County's solicitation of cable communications system franchise applications.

In January 1981, TMC issued a report to the County Government titled "Analysis of Cable Television Policy Issues and Requirements". TMC's report, which received the endorsement of the Cable Television Advisory Committee, included a number of specific recommendations regarding the structure of community programming.

The report stated explicitly that TMC's recommendations were based on an assumption that the County intended to create a non-profit entity to manage community programming. The TMC report referenced this entity as an "access corporation", and discussed the composition of the corporation's Board of Directors. Specifically, TMC wrote that:

> "The County has committed to establishing a nonprofit organization that will act as a centralized "umbrella" group to support community programming."

After noting that other communities had taken this approach, TMC stated that:

> "Typically, such a 'Community Access Corporation' (CAC) includes broad representation on its governing board, and is funded from franchise fees. Recent franchises have been awarded on the basis of a 3% fee to the franchiser, and an extra 2% of gross revenues to the CAC, or equivalent."

TMC recommended that the responsibilities of such a corporation should include:

- "Support for program production by non-profit community agencies and groups;
- "Management of public access channels on a first-come, first-served nondiscriminatory basis;
- "Developing of additional sources of funding, such as grants; and
- "Training of community personnel in video techniques."

TMC suggested that "one feasible method" for establishing a Community Access Corporation was for the County Executive to appoint an initial Board of Directors, with members who are broadly representative of all major County interests. This initial Board could then incorporate itself as a non-profit corporation, and establish its own bylaws for ongoing operations.

With respect to requirements for community programming in the County's Request for Proposal (RFP) for a cable franchise, TMC recommended that the County set both the level and sources of funding for the non-profit corporation that the County planned to establish to support local programming. TMC also recommended that evaluation criteria in the RFP rating process give credit to applicants on the basis of specific plans to stimulate the development of local programming.

The County's RFP for a Cable Communications System Franchise was issued in October 1981. The RFP included specific requirements that the franchisee provide at least one channel for public access, one channel for educational access, and one channel for government access. Applicants were specifically requested to present a "Utilization and Support Plan", that would describe how the applicant proposed to develop and operate "community programming" over the life of the franchise. The RFP used the term "community programming" to refer to local origination programming as well as to all public, educational, and government access programming.

The RFP indicated that an applicant's response on community programming could account for up to 17 of the 100 total points that an applicant could receive. The RFP stated that an applicant's Utilization and Support Plan should take into account certain County goals and commitments, which included the County's intention to create a non-profit corporation to manage public access. The following excerpt from the RFP is evidence that, at the time the RFP was issued, the County intended to form a non-profit corporation named "Montgomery Community Television, Inc." to manage public access:

> "The County desires to have locally produced programming that successfully communicates with the public to provide information and to enhance understanding and appreciation of issues, events, and people in this County and its communities.
>
> "To support this goal, the County intends to create a non-profit community television corporation (Montgomery Community Television, Inc. - MCT). The initial Board of Directors will have broad representation of the community and will be appointed by the County Executive and confirmed by the Council. The County will provide funding for MCT, initially assigning two-fifths of the franchise fee revenue to MCT." (RFP, page I-62.)

The RFP also listed four major functions that the County Government "will contract with MCT to perform" in exchange for funding:

- "To promote and facilitate the participation of individuals and community groups in local television production through education, training, and technical assistance.
- "Manage and schedule all non-commercial access channels other than those assigned to government agencies.
- "To provide technical assistance in program production to local government agencies.
- "To manage and program the principal or "flagship" community channel."

The County received eight proposals in response to its RFP. Telecommunications Management Corporation (TMC) was retained by the County to evaluate the eight proposals, and in a written evaluation submitted on April 27, 1982, TMC concluded that every applicant satisfied the County's minimum standards for community programming. However, TMC also noted that the resource commitments to community programming varied substantially. Specifically, the applicant who scored the highest with respect to community programming proposed spending $62.1 million to support access and local origination activities over the term of the 15-year franchise, while the applicant who scored the lowest with respect to community programming proposed spending only $13.7 million. The specific proposal offered by the cable company that was awarded the franchise is described in Section E of this chapter, starting on page 13.

D. Chapter 8A is Amended to Establish the Annual Cable Communications Plan

On May 13, 1983, several weeks before the County was to formally enter into a franchise agreement, the Council passed and the County Executive signed into law Emergency Bill 31-83 to amend Code Chapter 8A, Cable Communications. Among the additions to Chapter 8A was the establishment of an annual "Montgomery County Cable Communications Plan". The basic provisions for the "Cable Plan", are currently still in force as enacted in Bill 31-83.*

The Cable Plan established, by law, an annual process for allocating all County-controlled cable-related expenditures under the franchise. In many respects, the process resembles the County's annual budget approval process. As set forth in Code Section 8A-11(m), at least once a year, the County Executive is to propose a Cable Plan, which is subject to Council amendment and approval. Once approved by the Council, the Executive is given ten days within which to disapprove or reduce any items in the Plan; the Council then has 30 days in which to reapprove the Plan by the affirmative vote of five Council Members.

According to Code Section 8A-11(m), the annual Cable Plan is required to outline how all access and institutional grants required by the franchise agreement, and all other support by the franchisee for access programs (whether money or in-kind support) would be expended. The law permits the Council to "amend the plan using procedures similar to procedures used in amending the budget," and that any amendments to the Cable Plan "shall encompass levels and details customarily used in approving the County budget." The resources must then be expended in accordance with the Cable

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* Bill 26-89, Cable Communications-General Revisions, introduced May 2, 1989 and pending Council action, proposes to delete the Cable Plan, and instead to provide that all franchise fees and other moneys received by the County from any franchisee are appropriated and spent through the annual budget process without a separate Cable Plan process.

Plan, except that the Executive has the authority, without Council approval, to amend the Cable Plan to transfer up to ten percent of a grant from one major activity to another, or between activities in the Plan.*

Bill 31-83 also amended Section 8A-18, title "Administration", to require Council approval of certain County Executive actions pertaining to the administration of the cable law and the franchise agreement. Included among the amendments to this section was the following requirement concerning access:

> "Any designation by the County Executive of an entity to be responsible for control, supervision and management of community access channels provided by the franchisee shall be subject to approval by the County Council. If the board of directors of the entity are recommended or appointed by the County Executive, such actions shall be subject to County Council approval."**

E. The County Enters into a Franchise Agreement with Tribune-United Cable of Montgomery County (Tribune-United)

On May 25, 1983, the County government and Tribune United Cable of Montgomery County signed an agreement granting Tribune-United a 15-year franchise to construct and operate a cable television system in the County. Under the terms of the agreement, Tribune-United agreed to pay the County an annual franchise fee equal to five percent of gross revenues to be deposited into the County's General Fund.***

With respect to public, educational, and governmental access, and local origination, the franchise agreement committed Tribune-United to provide the following additional resources totalling more than $36 million over the life of the 15-year franchise:

- <u>Channels for PEG access use</u>. Tribune-United agreed to reserve three full-time and four part-time channels for community access; six full-time channels for government access (including channels for the municipalities); and four full-time channels for educational access. In addition, Tribune-United agreed to reserve three channels for local origination programming to be provided by Tribune-United, plus one "automated community bulletin board/job list/weather" channel.

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* For the first three years of the Cable Plan, payments and in-kind support for access went directly from the cable company to the PEG operators designated by the County in the Cable Plan. As will be described later in this report, this procedure was changed at the time the franchise agreement was modified in November 1986.

** This section of Chapter 8A is also proposed for deletion in Bill 26-89.

*** Franchise fee revenue is appropriated as part of the County's annual operating budget. It has remained the County's policy to expend this revenue on cable-related functions even though the 1984 changes to the federal Cable Act removed the requirement that local governments must do so.

- Additional funding. In addition to the five percent franchise fee, Tribune-United agreed to provide an annual grant equal to 1.5 percent of gross revenues to be paid to the County in quarterly installments for the life of the franchise. In addition, Tribune-United agreed to provide a $100,000 annual grant for each of the first three years of the franchise; a one-time $25,000 grant; a $70,000 annual grant for the duration of the franchise agreement; and a $150,000 start-up grant for the access corporation.

- Equipment and in-kind support for access. Tribune-United also agreed to provide capital equipment at a value equal to $4.3 million for "the development of public benefit cable services and local programming", and "staff, operational, logistical, and other support" for public, educational, and governmental access programming equal to $432,000 in the first year of the franchise; $1.1 million in the second year; $1.2 million in the third year; $1.3 million in the fourth year; and $1.3 million per year in the fifth through 15th year of the franchise. Tribune-United also agreed to maintain and replace this equipment as needed.

- Resources for local origination. In addition to resources committed to access, Tribune-United agreed to maintain local origination facilities that would be fully equipped and operational within one year of the signing of the franchise agreement. Tribune-United agreed to supply its local origination studio with at least $1.0 million worth of equipment and to replace this equipment as necessary. In terms of operating expenses for the local origination function, Tribune-United committed to spending $358,000 in the second year of the franchise, $744,000 in the third year, $765,000 in the fourth year, $774,000 in the fifth year, and $780,000 in the fifth through fifteenth years of the franchise.

Under the terms of the franchise agreement, Tribune-United also agreed to submit an annual local origination plan to the County for review and comment. Tribune-United committed to developing this plan in conjunction with the entity appointed by the County to manage public access, citizens representing the programming interests of the hearing-impaired, minority groups, and women's groups. In terms of specific programming, Tribune-United committed to producing a 30-minute daily news program that could be shown on the County's "flagship channel".

The access and institutional grants that Tribune-United agreed to provide were outlined in Section 31 of the franchise agreement, and the local origination facilities, equipment, and programming that Tribune-United agreed to provide were outlined in Section 33 of the franchise agreement. Section 32 of the franchise agreement, titled "Reallocation of Grants or Services: Cooperation Required", authorized the County to reallocate to other cable-related uses any of the resource commitments offered by Tribune-United in the franchise agreement.

F. County Appoints Task Force to Examine the Public Access Function

On September 20, 1983, the County Council approved Executive Regulation 21-83 to establish the Community Access Task Force. The Task Force, consisting of 21 members appointed by the County Executive and confirmed by the Council, was created for the specified purpose of preparing a report and making recommendations regarding the various alternatives for managing, promoting, and producing public access programming for cable television in the County. Members of the Task Force were required to file financial and political activity disclosure statements with the County's Ethics Commission.

The written Report of the Community Access Task Force was completed on March 1, 1984. On June 7, 1984, the Chair of the Community Access Task Force briefed the Council in public session on the report's findings. The Task Force's recommendations were based upon four intensive months of work that involved gathering comparative information about public access successes and failures around the country, holding a public forum, and consulting with the County's Cable Communications Advisory Committee which was established to assist in oversight and to advise the County on the administration of the franchise agreement.

The Community Access Task Force recommended the creation of, "an independent, non-profit, tax-exempt corporation, to be named Montgomery Community Television, Inc., as the structure best suited to meet the needs of Montgomery County in managing and promoting public access free from political influence."

The Task Force's major recommendations regarding MCT's staffing, governance, budget, programming, and operating procedures can be summarized as follows:

- Staff and governance. The Task Force recommended that a 15-member Board of Directors be responsible for exercising general oversight over all aspects of MCT. The Task Force recommended that Board members serve three-year staggered terms, and proposed that an initial 15-member Board be approved by the County Executive and Council, along with approval of MCT's incorporation papers. The Task Force outlined a procedure for electing future Board members, and recommended that financial and political conflict of interest disclosure regulations that applied to members of the Community Access Task Force also apply to MCT's Board of Directors and management staff.

  The Task Force recommended that day-to-day operational responsibility for MCT reside in an executive director and top management team. The Task Force proposed a staff organization for MCT that envisioned a full-time staff of 33 by FY86. The Task Force also recommended that a separate program advisory committee be appointed by the Board to help define and periodically review MCT's programming policies and goals, to monitor programming and schedules, and to stimulate new programming.

• Organizational accountability. The Task Force recommended that the County and MCT sign a four year contract to have MCT manage public access. The Task Force recommended the following measures to "promote the accountability of MCT":

- Prior to the preparation of each year's proposed budget for the Cable Plan, MCT should evaluate progress made during the previous year;

- MCT should prepare an annual report;

- MCT should be subject to an annual independent audit; and

- At the end of the four-year contract period, the County should evaluate MCT's efforts and determine whether or not to extend the contract for another four year term.

• Resources and budget. The Task Force report recommended that funding for MCT be subject to the annual Cable Communications Plan proposed by the County Executive and approved by the County Council. The report recommended funding for MCT be phased in during the first two years, with an annual operating budget of approximately $1.4 million by FY86. The Task Force emphasized that adequate financial resources were critical to MCT's success, but also noted that under the Task Force's recommended budget levels, public access would spend less than 25 percent of the $100 million expected to be available for cable related community uses during the 15-year term of the franchise.

• Programming: public access and the flagship channel. The Task Force recommended that MCT manage and promote a traditional public access channel and a "flagship channel", described as a channel that would carry the best of locally produced government, education, and public access programming plus some local origination programming produced by the cable company. The Task Force proposed that the start-up of MCT's programming proceed on two tracks, with some public access cablecasting to start near the end of 1984, and the flagship channel, named "The Montgomery Channel" to start six months later.

• Operating rules and procedures. The Task Force recommended that one of the first tasks of MCT should be to formulate operating rules and procedures governing such topics as: eligibility for participation in public access operations, program content (e.g., advertising, political material, indecent and obscene material); complaint and appeal procedures; and program ownership and distribution.

As will be described in later sections of this report, many of the recommendations of the Community Access Task Force were implemented, and others were implemented with only minor variations. While the Report of the Community Access Task Force is the written document that came closest to outlining a blueprint for the creation and future relationship of MCT to the County Government, it is important to note that there was never any formal action by the Council endorsing all of the recommendations contained in the Report of the Community Access Task Force.

G. **The County Approves the Incorporation Papers for MCT and Directs MCT to Select a Local Programming Contractor (LPC)**

On July 30, 1984, the FY85 Cable Plan was adopted. This Plan constituted the County's formal direction to Tribune-United for the use of resources from grants required to be provided under the franchise agreement for access and local origination during FY85 (July 1, 1984 to June 30, 1985).

The FY85 Cable Plan allocated $150,000 to Montgomery Community Television, Inc. (MCT), $2,000,000 to a Local Programming Contractor (LPC) to be selected by MCT, and approximately $1.6 million to Tribune-United for local origination activities. A description of MCT's functions and those of the LPC were detailed in the text of the cable plan.

Specifically, the FY85 Cable Plan described MCT as "an independent, citizen appointed, subscriber-controlled Maryland non-stock corporation." Proposed articles of incorporation and bylaws for MCT, which were drafted by an attorney on contract to the County, were attached to the Cable Plan as Council Resolution 10-876; the Cable Plan stated that these documents were "approved by, attached to, and incorporated into this Plan."

The FY85 Cable Plan described MCT as responsible for: "Overall control, supervision and management of the community access channels provided by the franchisee", and stated that MCT would "hire an executive director who has both technical and managerial credentials, two supporting professionals, and a secretary." However, in a departure from the recommendations of the Community Access Task Force, instead of directly assigning the MCT Board and staff the task of operating the public access function, the FY85 Cable Plan placed MCT in charge of selecting a "Local Programming Contractor (LPC)" to provide for the operation of local cable television programming services. Under the FY85 Cable Plan, MCT was directed to select an LPC, and to submit a proposed contract with the LPC to the County Executive and the Council for final approval. The FY85 Cable Plan indicated that future funding for the LPC would be subject to the Cable Plan process.

H. **Montgomery Community Television, Inc. is Incorporated**

On September 5, 1984, the articles of incorporation for Montgomery Community Television, Inc. were filed with the Maryland Department of Assessments and Taxation to create MCT as a 501(c)(3) corporation under State law. On November 2, 1984, bylaws for MCT were adopted by MCT's initial Board of Directors.

As explained in the previous section, the language for both the articles of incorporation and the bylaws had been approved by the County Executive and Council in an attachment to the approved FY85 Cable Plan. Both of these documents included identical statements of MCT's purpose,* and established guidelines on issues such as the composition of MCT's Board of

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* An excerpt from MCT's bylaws describing MCT's purpose is attached as Appendix B.

Directors, the minimum number of meetings, the annual election of corporate officers, procedures for amending the articles and bylaws, and requirements for directors to file financial and political activity campaign disclosure statements.

The bylaws established that MCT shall have 15 voting directors and eight non-voting directors; the bylaws required that 12 of the voting directors be selected as representatives of 12 designated groups, with three additional voting directors to be selected by the first 12, with "due regard to obtaining a balance of skills and backgrounds desirable for the directors of this type of organization." (See Appendix C for a list of these 12 groups.) In addition, the bylaws required that one non-voting member may be selected to serve ex-officio by each of the following:

- Any cable system operator franchised by the County;
- The County Executive;
- The County Council;
- The Montgomery County Chapter of the Maryland Municipal League;
- The City of Rockville;
- The City of Takoma Park;
- The Montgomery County Public Schools; and
- Montgomery College.

The bylaws provided that directors were to be appointed for two year terms, or until their successor was selected and approved. The bylaws required that, starting in 1987, the selection of the voting members of the Board would become subject to approval by a majority of the members of the Corporation, defined as all cable television subscribers who receive locally produced cable programming.

In addition to providing that the County Council and County Executive could each designate a non-voting member of the MCT Board of Directors, the articles of incorporation and the bylaws contained the following provisions that concern the structure of MCT's relationship with the County:

- Both the articles and bylaws required that any amendments to these governing documents be approved by two-thirds of the directors in office, the County Council (by motion or resolution) and the County Executive;

- The articles of incorporation required MCT to remain politically neutral and not attempt to influence legislation. As stated in the seventh section of the articles: "No part of the Corporation shall be devoted to carrying on propaganda or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene in any political campaign on behalf of any candidate for public office";

- The bylaws required each MCT director, as a condition of serving on the Board, to file with the County Ethics Commission an annual sworn confidential financial disclosure statement and a political campaign activity disclosure statement, and be subject to the requirements of certain sections of the County's ethics law, "as though the director were an employee or public official and the exercise of his or her duties as director were official acts on behalf of a Montgomery County government agency;"* and

- The bylaws required that each MCT director shall not, while serving on the Board or within one year following service be employed by: (1) a cable television franchisee of the County; (2) in a position under exclusive control of the Executive or Council; or (3) by any individual or corporation (other than MCT) for representation before the County on any matter related to cable television.

I. The FY85 Cable Plan is Amended to Eliminate the Local Programming Contractor

On May 14, 1985, the FY85 Cable Plan was amended to eliminate the requirement for a local programming contractor (LPC), and to authorize Montgomery Community Television, Inc. itself to hire appropriate staff to operate certain local cable television services under the franchise. This change was recommended by the MCT Board of Directors in an April 1, 1985 memorandum to the County Executive and County Council. The recommendation of the MCT Board to assign direct operating responsibilities to MCT represented a return to the recommendations offered in March 1984 by the Community Access Task Force.

The MCT Board of Directors based the recommendation to eliminate the requirement for an LPC on their evaluations of the LPC proposals that were received. The MCT Board concluded that it would prefer the flexibility and cost effectiveness of operating the company directly, hiring its own staff and bringing in consultants as needed for special projects. Specifically, the MCT Board concluded that:

- None of the LPC bidders had the level of in-house television operational and management experience that MCT desired;

- Contracting with an LPC would result in significant overhead costs (estimated at $600,000 during the two and one-half year period of the first contract) without compensating advantages; and

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* Specifically, the bylaws stated that: financial disclosure statements must disclose the information required in Code Section 19A-14, Content of statement of financial interest; political activity disclosure statements must report any activities relating to the support or opposition of a candidate or ballot question in a partisan or non-partisan election, as required of CCAC members in Executive Regulation No 20-83, paragraph (6); and the sections of the ethics law that apply to MCT Board Members are Sections 19A-7 through 19A-11, which outline conflict of interest standards for County officials and employees.

- Because any start-up company must remain flexible, it would have been necessary to make many "mid-course" corrections to any contract signed with an LPC.

The MCT Board of Directors also expressed confidence that a professional staff could be assembled to operate the corporation at a high level of quality. This was reenforced by the appointment of many MCT Board Members with diverse experience in all aspects of television, and the hiring of an experienced Executive Director.

In addition to implementing the MCT Board's recommendation to assign operating responsibilities to MCT, the Amendment to the FY85 Cable Plan also: increased MCT's funding for the remaining two months of FY85 in order to reflect MCT's additional responsibilities; directed Tribune-United to provide MCT with office space; and directed MCT to negotiate a multi-year (through 6/30/88) contract with Tribune-United, subject to County Executive and County Council approval. As described in the FY85 Cable Plan Amendment, the purposes of this contract were: to outline MCT's functions; to provide for the transition of certain staff from Tribune-United to MCT;* to specify that Tribune-United would provide MCT with the level of funding approved in the annual Cable Plan; and to provide that Tribune-United would make quarterly payments in advance to MCT. The Amendment to the FY85 Cable Plan established July 1, 1985 as the deadline for submitting a draft contract to the Council and County Executive for approval.

In addition, the Amendment to the FY85 Cable Plan added a number of other provisions regarding MCT's relationship to the County:

- Items of equipment costing more than $5,000 needed prior review and approval by the Interagency Technology Coordinating Committee; (the ITCC was established on July 24, 1984 by the County to coordinate the implementation of new technologies by County agencies and contractors); and

- MCT's budget was approved subject to a staffing plan included in the Cable Plan. MCT's Board was explicitly given the authority to modify the staffing plan, as long as any modifications did not result in an increase in the number of authorized workyears and funding levels.

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* Prior to the establishment of MCT, Tribune-United staff had provided some public access training. However, no public access channel was in operation until MCT's launch of the Open Channel on November 20, 1985.

Approximately four months following the adoption of the Amendment to the FY85 Cable Plan, the Council approved the FY86 Cable Plan. Adopted on September 24, 1985, the FY86 Cable Plan allocated $1.2 million to MCT, and built upon the decision made in the Amendment to the FY85 Cable Plan to authorize MCT to hire its own public access staff directly rather than through a local programming contractor. The FY86 Cable Plan further detailed MCT's mission, and added the requirement that the MCT Board of Directors adopt an affirmative action plan and MFD procurement procedures that took into account both the requirements of the franchise agreement and the County's MFD procurement law.

The $1.2 million allocated to MCT was approved in three spending categories: $752,000 for salaries (52 positions and 32 workyears); $405,000 for operating expenses; and $62,000 for office equipment. The FY86 Cable Plan again directed MCT to hire staff according to a staffing plan that was to be reviewed and approved by the County Council, and repeated the provision that the MCT Board may modify the staffing plan, provided that modifications did not exceed the work years and funding levels approved in the Cable Plan.

In a follow-up to one of the provisions contained in the Amendment to the FY85 Cable Plan, the FY86 Cable Plan also included the draft of a three-year contract to be executed between MCT and Tribune-United. The FY86 Cable Plan directed MCT to execute this contract on or before October 15, 1985. (A review of the record indicates that this contract between MCT and Tribune-United was never executed.)

Finally, the FY86 Cable Plan added certain directions to Tribune-United regarding in-kind support for MCT. Specifically, the FY86 Cable Plan directed Tribune-United to provide what was termed "MCT Technical Support" worth $1,093,000. This included: $118,000 in personnel (6 positions and 4.3 workyears) to include engineers and technicians; $42,000 in operating expenses primarily for equipment maintenance; $671,000 for equipping the Central Access Studio, and $262,000 for video equipment.

It was during the time period of the FY85 and FY86 Cable Plans that increasing disagreements developed between the County Government and Tribune-United regarding Tribune-United's compliance with the franchise agreement. These disagreements resulted in a formal legal dispute between the County and Tribune-United.

J. The Cable Franchise is Transferred from Tribune-United to Montgomery Cablevision Limited Partnership

On July 15, 1986, Montgomery County, Tribune-United Cable of Montgomery County, and Hauser Communications, Inc. entered into a written "Settlement Agreement" for the stated purpose of resolving "outstanding claims and disputes." The Settlement Agreement outlined proposed modifications to the original franchise agreement (entered into on May 25, 1983), and a proposed transfer of the cable franchise from Tribune-United to Montgomery Cablevision Limited Partnership, a subsidiary of Hauser Communications, Inc.

(The operating name of Montgomery Cablevision Limited Partnership is Cable TV Montgomery.) The Settlement Agreement also specified cash payments that Tribune-United and Hauser Communications, Inc. would pay to the County Government.

On November 14, 1986, the cable franchise was formally transferred from Tribune-United to Montgomery Cablevision Limited Partnership and the franchise agreement modified in accordance with the Settlement Agreement. The following two major cash payments to the County were agreed to:

- $7 million to be paid by Tribune-United to the County on the date of transfer; and
- Ten million to be paid by Tribune of Maryland (Tribune of Maryland was acquired by Montgomery Cablevision Limited Partnership on November 14, 1986) to the County over a seven year period, in quarterly installments of approximately $357,500, starting on June 1, 1989 and ending on March 1, 1996.

The negotiated Settlement Agreement included reductions in the level of funding and other resources that the new franchisee would provide for access and local origination for the remaining 12 years of the 15-year franchise. The revised franchise agreement eliminated all of the franchisee's commitments to provide local origination, and almost all of the special grants and commitment of in-kind support for PEG access. Overall, the resources available for access under the revised franchise agreement were $30.4 million, which was a reduction of $11.7 million from the $42.1 million promised under the original franchise agreement.

Under the terms of the revised franchise agreement, 13 channels are reserved for the County Government. Section 30(B) of the franchise agreement assigned seven of these channels for PEG use. In addition, the revised franchise agreement continues to authorize the County Government to allocate the remaining six channels for "future public, educational, and government (PEG) access use". (The text of Section 30 of the revised franchise agreement is attached for reference as <u>Appendix D</u>.)

As part of the Settlement Agreement, the County successfully negotiated a continuation of the annual grant equal to 1.5 percent of gross revenues, paid to the County from the franchisee on a quarterly basis for the purpose of supporting public, educational, and government access. The original franchise agreement had provided that payments of this grant would be made directly from the cable company to the entity appointed in the Cable Plan by the County to manage public access, i.e., MCT. However, the revised franchise agreement provided that payment of this grant would, for the remaining 12 years of the franchise, be made directly to the County Government, which would then disburse funds to the various PEG operators.

The transfer of the cable franchise also affected the ownership of some equipment that Tribune-United had purchased to support the beginning efforts of the PEG operators: MCT, the City of Rockville, the City of Takoma Park, MCPS, and Montgomery College. From 1983-86, Tribune-United had retained title to this equipment and loaned it out to the various users. Since at the time the franchise was transferred, the franchisee's commitment to provide in-kind support for access was eliminated, the equipment that Tribune-United had purchased to support access was transferred to the County. In the County's Video Transfer Agreement of November 25, 1986, the County divided the equipment among the PEG operators, each one receiving the equipment that had been purchased by Tribune-United on their behalf. At that time, Cable Office records indicated that MCT received $122,562 worth of video equipment.

Also, at the time of the transfer, the County government established a special fund account titled the Cable TV Special Revenue Fund. All funds received from the cash payments outlined in the Settlement Agreement plus the annual grant equal to 1.5 percent of gross revenue have since been deposited in the Cable TV Special Revenue Fund. Use of this fund is subject to annual appropriations action, and the decisions of the County Executive and Council in the annual Cable Plan.

V. THE STRUCTURE OF MONTGOMERY COMMUNITY TELEVISION INC.'S RELATIONSHIP TO THE COUNTY GOVERNMENT

A. Introduction

This chapter describes the structure of Montgomery Community Television Inc.'s (MCT's) relationship to the County Government.

Section B: MCT's Mission reviews how Cable Plans and contracts have described the activities MCT is to perform in exchange for funding;

Section C: MCT's Funding summarizes the levels of funding allocated each year to MCT in the annual Cable Plan, and describes how these funds have been disbursed each year to MCT;

Section D: Annual Budget Process describes the annual process of allocating cable grant funds to MCT;

Section E: MCT's Reporting Requirements describes the data that the County Government has required MCT to provide the County Government during each of the past five years;

Section F: Conditions Placed on MCT's Funding describes the conditions that the County Government has placed each year on MCT in exchange for funding; and

Section G: Other reviews several other important aspects of MCT's relationship to the County during the past five years.

B. MCT's Mission

A review of the FY85-FY90 Cable Plans and the FY88-FY90 contracts executed between MCT and the County Government indicates that MCT's "mission" has evolved since MCT was incorporated in September 1984. There are certain tasks that MCT has been consistently requested to perform, several others that appeared for a period of one to three years, and others that were added and remained part of MCT's responsibilities.

Although the exact description of MCT's "mission" has changed over the years, since the FY85 Cable Plan was amended on May 14, 1985, MCT has been assigned the overall responsibility for controlling and managing two of the PEG channels provided to the County Government under the terms of the County's cable franchise agreement.* In particular, the annual Cable Plans consistently assigned MCT the overall responsibilities of establishing policies for the form, content and scheduling of programming on these two channels, and promoting the use and benefit of public access.

A review of legislative records shows that since MCT's incorporation in September 1984, the County Government has expected that one of the PEG channels allocated to MCT would be managed as a traditional public access channel, meaning a cable channel on which any member of the general public may cablecast. The purpose of such an access channel is to provide a forum for community expression and the free exchange of ideas, and to that end, the channel is available on an open, non-discriminatory basis to all residents and groups. At present, Channel 49, known as the "Open Channel", is operated by MCT as a traditional public access channel. Channel 49 is a non-commercial channel on which all programming is either produced locally or sponsored by a local resident. Except for minimal restrictions (e.g., limitations on obscene and libelous material), MCT exercises no editorial control over programming content on Channel 49.

The legislative record also indicates that since FY85, the County Government has expected that the other PEG channel allocated to MCT would be managed differently from a traditional public access channel, in that MCT would be allowed to exercise editorial control over program content and the selection of programs. The Community Access Task Force described this second channel as a "flagship channel" that would carry the best of locally produced cable programming from government, education, and public access channels, as well as selected local origination programming produced by the cable company.

At present, Channel 21, "The Montgomery Channel" is the second PEG channel allocated to MCT. Channel 21 currently includes community-oriented programs obtained in one of three ways: selected programs originally produced for viewing on one of the County's PEG channels (consistent with the original "flagship" concept); programs acquired from elsewhere by MCT to serve traditionally underserved groups (e.g., the hearing-impaired); and programs produced locally either by trained volunteers, by MCT professionals, or by a

* For description of the Amended FY85 Cable Plan, see page 19.

combination of volunteers and MCT professionals. In contrast to a traditional public access channel, MCT exercises editorial control over program content and the selection of programs for Channel 21. At present there are certain programs on Channel 21 that contain advertising.

Since its incorporation, in addition to the general assignment of managing two access channels, MCT has been responsible for training community producers, and providing training and technical assistance to support the County Government Channel. Since FY86, Cable Plans have also directed MCT to provide support (upon request) to the cities of Rockville and Takoma Park, and to the Montgomery County Chapter of the Maryland Municipal League, each of which were granted the use of a PEG channel under the terms of the County's franchise agreement. MCT's specific responsibilities to the municipalities have included maintaining equipment and performing playback services.*

The FY87 Cable Plan expanded MCT's basic "mission" to include a number of tasks that the original franchise agreement had assigned to the cable company, but which were eliminated as part of the Settlement Agreement that accompanied the transfer of the franchise in November 1986.** Specifically, Cable Plans since FY87 have assigned MCT the additional tasks of producing a local news program; and supporting special interest groups (including the hearing impaired) in training and program production.

From FY86 through FY88, MCT was also requested to provide support for the NEXUS Educational Corporation, which was described in the FY86 Cable Plan as an "interinstitutional entity to facilitate the use of cable television in the County by educational institutions for instructional purposes". MCT's assignment in this area was expanded in FY88 to provide a NEXUS pilot program. There has been no mention of NEXUS in either the FY89 or FY90 Cable Plans.

In general, the first three Cable Plans (FY85 - FY87) contained more details about MCT's mission than the Cable Plans since FY88. This is because the early years included certain start-up tasks (e.g., hiring an executive director; establishing basic rules for public access), and because in FY88, the County Government began its current practice of entering into an annual contract with MCT. A contract was introduced in FY88 because the revisions to the franchise agreement implemented during FY87 changed the flow of grant funds such that MCT began to receive grant money that passed through the County treasury, instead of directly from the cable company. A contract also provided the County Government with a legal document, in addition to the Cable Plan, for articulating what the County Government expected from MCT in exchange for funding.

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* The equipment maintenance and playback functions for the City of Takoma Park have since been transferred back to the City, at its request.

** For a description of the Settlement Agreement, see page 21.

In FY88, one contract was executed between MCT and the County Government that outlined the services that MCT was expected to perform in return for the payment of grant dollars. In FY89 and FY90, the County Government has divided MCT's responsibilities into three contracts: two "service contracts" (one with the County Council and one with the Executive's Office of Public Information) that outlined MCT's support for the County Government Channel, and one "master contract" that outlined MCT's other responsibilities.

According to the Cable Office staff, the primary reason for dividing MCT's contract into three components was to enable the Office of the County Council and the Office of Public Information to directly account for resources provided to MCT to support the County Government Channel. In addition, it was felt that the technical and staff services that MCT provided in support of the County Government Channel should be separately identified and paid for according to the extent these services were needed.

A review of contracts executed between the County and MCT verifies their consistency with the general parameters of MCT's "mission" as established in the annual Cable Plans. The "Scope of Services" section of the FY90 master contract directs MCT to provide the following major services: manage two access channels; produce a daily news program; train community producers and technicians; promote public access programming; maintain a central access studio, field production equipment, and editing equipment for use by community producers and technicians; maintain and repair video equipment; provide technical advice and repair equipment upon request to the municipalities; provide character-generator services on MCT's channels and the municipal channels; provide playback services for MCT's channels and for the City of Rockville channel; and support special needs groups in training, program production, and program presentation.

In comparison to the Cable Plans, the contracts elaborate upon the tasks MCT is expected to perform during the coming year. Two examples of this are provided in <u>Table 1</u> (page 26a), which compares the language in recent Cable Plans to that in the FY88, FY89, and FY90 contracts with respect to MCT's responsibilities to train community producers and to produce a news program.

In contrast to the master contract, MCT's activities under the service contracts are performed under the direct supervision of County Council and Office of Public Information staff. The nature of MCT's "mission" as described in the service contracts is significantly narrower than under the master contract. In particular, the service contracts establish charges for the provision of certain services that MCT shall perform exclusively to support the production of programming on the County Government Channel (Channel 55); the services provided by MCT include writing, providing technical staff (e.g., camera operators) and playback services, and maintaining video equipment.

Table 1

Examples of MCT's Mission
as Described in Cable Plans vs. Contracts

DOCUMENT	NEWS PROGRAMS	TRAINING
Cable Plan(s)	Produce a local news program.*	Train community producers in program production and assist citizens and community organizations in developing locally-produced or locally-sponsored programming.**
FY 1988 Contract	Produce a daily local news program, subject to the availability of funding in the cable plan.	Train County residents in the techniques of video production, provide technical advice to the public in the execution of quality productions.
FY 1989 Master Contract	Produce a daily news program of a duration of at least one-half hour and cablecast Monday-Friday (except if an MCT holiday falls on Monday-Friday), focused on Montgomery County news.	Train and/or certify at least 400 County residents in the techniques of video production, and provide technical advice to these certified producers and technicians in the execution of quality productions.
FY 1990 Master Contract	Produce a daily news program of a duration of at least one-half hour and cable cast Monday-Friday (except if an MCT holiday falls on Monday-Friday), focused on Montgomery County news. At least 250 news shows of this type will be produced. It is understood that, like other MCT public access or professional programs, the County is not to be involved in any of the editorial or content or scheduling decisions on the news program. Maintain video and other equipment in support of the news program. Promote the schedule of the news program.	Provide training classes in video production techniques to Montgomery County residents, as defined by the "Statement of Policy on Public Access" adopted by the MCT Board of Directors on May 6, 1985. Provide at least 400 video production training opportunities, or provide a training opportunity to all County residents requesting training, whichever is less. Of the 400 opportunities, at least 300 must be the result of a training class rather than an equivalency test. When there is a waiting list for training classes, MCT must use its best efforts, including reallocation of resources, to initiate training classes for these citizens within six months of a person signing up.

* As directed by the adopted FY89-90 cable plans.

** As directed by the FY88-90 cable plans.

Source: Cable Plans and MCT/County contracts.

C. MCT's Funding: Levels and Methods of Fund Disbursement

1. MCT's Funding Levels. MCT's funding is appropriated through the County's budget process and, by law, allocated by the annual Cable Communications Plan approved by the County Council and County Executive. Tables 2 and 3 (pages 27a and 27b) summarize the levels of funding allocated to MCT in the FY85 through FY90 Cable Plans, and indicates for each year how the funds were disbursed. The data indicate that:

- Since FY86, the total amount allocated to MCT each year in the Cable Plan has ranged between $1.5 million and $2.7 million, which in certain years included significant outlays for initial purchases of video equipment;

- The annual allocation for MCT's salaries has increased every year; the $1.475 million allocated for salaries in FY90 represents more than a doubling of the $672,000 allocated for salaries in FY86;

- The annual allocation for MCT's operating expenses has also increased every year, except for a $56,000 reduction between FY86 and FY87; and

- In comparison to the steady increases in funds for salaries and operating expenses, the annual allocations to MCT for equipment and capital improvements have been more variable, ranging from zero (FY90) to over $1.3 million (FY87). The larger amounts allocated from FY86-FY88 were to construct MCT's central studio, access centers, and video graphics design center, to make initial purchases of MCT's office and video equipment, and to purchase Council cablecast equipment.

Cable Office records show that during the five year period (FY85-FY89), MCT received funds equal to 99 percent of the total amount allocated to MCT in the five Cable Plans. In individual years, however, there was some variance between the total amount allocated to MCT and the amount actually received. In several years, MCT's actual expenditures of cable grant funds was somewhat lower than the amount allocated in the Cable Plan; in FY89, a variance of approximately $30,000 was due to the County Government not requiring services from MCT (under the two service contracts) equal to the full amount allocated in the Cable Plan. In the fourth quarter of FY87, MCT received a supplemental appropriation that included increased funds for MCT to use in conjunction with the additional responsibility to produce a daily news program.

A review of MCT's independent audit statements since FY86 indicates that cable franchise grant funds have continued to represent the largest proportion of MCT's total budget. MCT's revenue from other sources increased from approximately $28,500 in FY86 to almost $200,000 in FY89; MCT's approved FY90 budget estimates that MCT will raise $201,000 in outside revenue this year. However, even though MCT's revenue from other sources has increased, MCT continues to rely on the allocation of cable grant funds for almost 90 percent of its annual budget.

Table 2

Cable Plan Allocations to MCT Including Method of Disbursement
FY85 - FY90

	ALLOCATION OF GRANT FUNDS TO MCT ($000)						DISBURSEMENT OF GRANT FUNDS	
CABLE PLAN	TOTAL	SALARIES	OPERATING EXPENSES	OFFICE AND VIDEO EQUIPMENT	CAPITAL IMPROVEMENTS	FUND RAISING GRANT	CHECK WRITTEN BY:	METHOD
FY 1985	$2,150[a]	N/A	N/A	N/A	N/A	-0-	Cable Operator	Quarterly in advance
FY 1985 amended	314[b]	$ 134	$ 140	$ 40	-0-	-0-	Cable Operator	Quarterly in advance
FY 1986	1,477	672	395	100	$310[c]	-0-	Cable Operator	Quarterly in advance
FY 1987	2,715	1,013	339	1,163	200[c]	-0-	3 quarters: Cable Operator 4th quarter: County Government	Quarterly in advance
FY 1988	1,892	1,169	482	241	-0-	-0-	County Government	Quarterly in advance
FY 1989	2,086[d]	1,436	500	100	-0-	$50	County Government	Monthly in advance
FY 1990	2,069[d]	1,475	594	-0-	-0-	-0-	County Government	Monthly reimbursement; 16.7% in advance to be repaid in the 4th quarter.
TOTAL: FY85-FY90	$10,553[e]	$5,899	$2,450	$1,644	$510	$50		

[a] Includes $2 million for a Local Programming Contractor, which was not implemented in FY85 and was deleted in the Amended FY85 Cable Plan.
[b] The amendment included first quarter FY86 funds; FY85 funds only are listed here.
[c] Includes funds for the interior build-out of the headquarters/central studio.
[d] Includes master and service contract allocations (see Table 3).
[e] Using the amended FY85 Cable Plan budget figures.

Source: Cable Office records.

Table 3

Cable Plan Service Contract Allocations
FY89 - FY90

	FY 1989	FY 1990
County Executive	$212,200	$225,872
County Council	$136,100	$132,128
TOTAL:	$348,300	$358,000

Source: Cable Plans, FY89-FY90.

Note: These service contract allocations are included in the total MCT grant fund allocations listed on Table 2.

2. Method of Fund Disbursement. As noted on Table 2 (page 27a), the method of disbursing funds to MCT has changed during the past four fiscal years. These changes resulted partly from revisions to the franchise agreement, and partly from changes to the County Government's general practices regarding disbursement of funds to contractors. While this section describes these changes, the impact that the changes had on MCT's working relationship with the County are explored more fully in the following chapter.

The change from the franchisee to the County government as the entity that issues checks to MCT resulted from a specific revision to the County's cable franchise agreement that went into effect on November 14, 1986. As explained earlier in this report, under the terms of the original franchise agreement, Tribune-United agreed to pay grant funds directly to the organization designated by the County to operate public access (i.e., MCT), with the total amount to be allocated established on an annual basis in the Cable Plan. Under the revised franchise agreement, Montgomery Cablevision Limited Partnership agreed instead to pay all of the grant moneys directly to the County Government, which would then disburse the funds to the various PEG operators, as directed by the annual Cable Plan.

During the years that MCT received money directly from the cable company, the terms and conditions under which MCT received funds were established only in the annual Cable Plan. When the franchise agreement was modified such that MCT began to receive grant money directly from the County, the County Attorney advised that it was necessary for MCT and the County Government to enter into a formal contract, and for MCT to be approved as a grantee to receive funds on a non-competitive basis, in accordance with the County's procurement law, Section 11B-42, Cooperative Purchasing, public entity contracting and grants. The Council, by resolution, formally appropriates MCT's funding out of the Cable TV Special Revenue Fund.

During FY88, the County continued the cable company's practice of disbursing funds to MCT using a payment method described as "quarterly in advance", which meant that the County sent MCT a check at the beginning of each quarter (July 1, October 1, January 1, April 1) equal to approximately one-fourth of the total grant allocation for the year. After the close of the fiscal year, any portion of the grant that remained unencumbered by the last day of the fiscal year was subtracted from the following year's payments to MCT.

During FY88, the County Government began to revise its general practices regarding disbursement of funds to County contractors. According to the Director of the Department of Finance, the effort was to implement "good fiscal controls", and in particular, "reasonable, consistent, and prudent fiscal controls on advance payments." (See comments from the Department of Finance, page 94.)

One result of this effort was that the County changed the method of payment in many contracts from quarterly in advance to cost reimbursement. According to a standard application process, the Director of the Department of Finance was authorized to approve the continuation of some limited advance payments to contractors.

The method of disbursing funds to MCT was affected by this change in County Government policy. Beginning in FY89, for payment of services performed under the service contracts, MCT received a 16.7 percent advance with the remaining payment disbursed on the basis of a monthly invoice that detailed actual costs incurred. In FY89, for services performed under the master contract, MCT received payment on a monthly in advance basis; and in FY90, MCT was provided with an advance equal to 16.7 percent of the total grant allocation, with remaining payments provided on a monthly cost reimbursement basis. According to the FY90 master contract executed with MCT, the 16.7 advance must be repaid during the fourth quarter of the fiscal year.

The FY90 master contract executed between MCT and the County requires all of MCT's charges to be billed according to three functional spending categories: public access, news, and fund raising. In order to help MCT meet its cash requirements, the contract was structured to allow MCT to bill the County in part on a fixed price basis, and in part on a direct usage basis. The FY90 master contract divides MCT's allowable charges into fixed and variable charges for both salaries and operating expenses. For salaries and wages, the contract lists fixed rates per work day for "functional activity personnel"and "administrative personnel", and identifies other personnel who are billed on an hourly basis. For operating expenses, the contract lists which charges are billed on a fixed basis of 1/12 per month (rent, property taxes, insurance), and also lists the categories of operating expenses to be charged on a direct usage basis.

The record shows that since FY89, MCT has faced periodic cash flow difficulties. Interviews with MCT and Executive branch officials indicate some disagreement as to the cause of MCT's cash flow problems. In particular, MCT officials maintain that MCT's cash flow difficulties were primarily caused by the change away from quarterly in advance grant payments, while County officials believe other factors contributed to MCT's cash flow problems. This issue is discussed in detail in the following chapter. (See page 55.)

D. The Annual Budget Process

1. The Cable Plan . On May 13, 1983, as reviewed in the previous chapter (see page 12), several weeks before the original franchise agreement was formally signed, the legal requirement for an annual Cable Communications Plan was added as an amendment to Chapter 8A, Cable Communications. The Cable Plan was created as an annual process for allocating all County-controlled cable-related expenditures under the cable franchise agreement, and in many respects, the Cable Plan process itself resembles the County's annual operating budget process. MCT's funding is then formally appropriated by Council Resolution on expenditures from the Cable TV Special Revenue Fund, the County's fund into which all grant and settlement moneys from the franchise are deposited.

As set forth in Code Section 8A-11(m), at least once a year, the County Executive proposes a Cable Plan, that is subject to Council amendment and approval. Once approved by the Council, the Executive has ten days within which to disapprove or reduce any items in the Cable Plan; the Council then has 30 days in which to reapprove the Cable Plan by the affirmative vote of five Council Members.

Until FY88, the Cable Plan was proposed by the Executive and acted upon by the Council at various times during the year. However, since FY88, the Cable Plan has been proposed by the Executive and considered by the Council each year as part of the deliberations on the County's annual operating budget. In fact, for the past three fiscal years, the Executive's recommended operating budget document has contained the Executive's recommended Cable Plan.

It should be noted that Bill 26-89, Cable Communications-General Revisions, introduced May 2, 1989, and pending action by the Council, proposes to eliminate the section of Chapter 8A that establishes the Cable Plan. Under the amendments proposed in Bill 26-89, the allocation of cable grant funds would become part of the County's annual operating budget without a requirement for a separate Cable Plan. The primary argument for eliminating the Cable Plan seems to be that since FY88, the Cable Plan has been considered alongside the operating budget, and this change would remove the requirement to process a separate Cable Plan document. It should be acknowledged, however, that eliminating the Cable Plan would in certain respects reduce the legislative branch's authority to be involved with administering cable grant monies, because under current law, funds appropriated from the Cable TV Special Revenue Fund (the County's fund into which all grant and settlement moneys from the franchisee are deposited) must be administered in accordance with terms and conditions written into the text of the Cable Plan.

2. <u>MCT's Funding Request to the County</u>. Prior to FY88, there was no written agreement between MCT and the County Government that outlined what information MCT was required to provide the County Government concerning MCT's funding request for the following fiscal year. Since FY88, however, the master contract between MCT and the County Government has contained a separate article titled, "Budget Request". This article sets forth deadlines by which MCT must submit its funding request for the following fiscal year in a form approved by the County. The FY88 contract set September 30 as the deadline for submitting next year's funding request; the FY89 and FY90 contracts modified this to require a draft by October 15, with the final request to be submitted by November 30. The FY89 and FY90 contracts also allowed MCT to submit minor amendments to the funding request through January 10.

The master contracts executed since FY88 also detail the information that MCT must provide to the County Government as part of MCT's annual funding request. The data requested from MCT is similar to that requested by the Office of Management and Budget from County Government departments, e.g., a summary of the previous year's accomplishments, a statement of goals and objectives for the next fiscal year, an organizational chart, a personnel complement, and a funding request for next fiscal year by spending category.

Every contract has also required MCT to submit some planning information to the County Government as part of its budget request. The FY88 contract required MCT to submit (as part of its FY89 budget request) a projection of staffing and budget needs through FY98, and a narrative summary of future directions. The FY89 contract clarified this by requiring a plan of the future direction of MCT, covering at least the next six years, including a table of outside revenues and County funding, and "a narrative summary of projected developments, changes, and challenges." The FY90 master contract requires MCT to submit a plan of the future direction of MCT, including a table projecting funding needs from the County through FY98.

Two requirements added to the FY90 master contract are worth noting. The FY90 master contract requires that, as part of its FY91 budget request, MCT provide both a funding request by the spending categories of salaries, operating expenses, office equipment, and video equipment, and a personnel complement that shows the percentage of time (workyears) and dollar value allocated to the functional spending categories of public access services, the news program, fund raising, and other expenses. The other notable addition in the FY90 contract is the provision that:

> "Failure of MCT to submit the budget request in a timely manner is deemed a material breach of the contract for which the County may take appropriate action under the contract."

According to Cable Office staff, this provision was added because of problems confronted during the FY89 budget cycle, during which MCT submitted its request for funding three months later than requested, i.e., in January 1988 instead of October 1987. This in turn made it difficult for Cable Office staff to finalize their recommendations on the allocation of all cable grant funds (not just MCT's), and posed problems for the Cable Office in terms of meeting the internal Executive branch deadlines for budget review.

3. Comparison of MCT's funding levels as recommended by the Executive and approved in the final Cable Plan. A review of the legislative record indicates that in three out of the past four fiscal years, the Council has amended the Executive's proposed Cable Plan to increase the allocation of cable grant and settlement funds to MCT. The Executive has not vetoed any of the increased funding for MCT approved by the Council.

During the FY89 Cable Plan process, the question of MCT's funding level became complicated by discussions of MCT's "independence". Specifically, in the proposed FY89 Cable Plan, the Executive recommended that MCT be provided with approximately $1.9 million for FY89. Although this represented an increase of 16 percent in salaries and eight percent in operating expenses over MCT's FY88 funding level, it was approximately $400,000 less than the $2.3 million that MCT had requested for FY89. This difference of opinion set off a dispute between MCT and Executive branch officials.

In response to the Executive's proposed budget, MCT officials publicly announced that "the Montgomery County Government is proposing to slash MCT's budget for training and facilities by a considerable amount beginning in July, 1988"*, and that the reduced funding would cause the

* March 24, 1988 letter from MCT Board President to "Friends of MCT".

elimination of certain key services and a drastic increase in class fees. In public hearing testimony before the County Council in March 1988, the President of MCT's Board of Directors asserted that the Executive's budget proposal was a "capricious cutting of support for much of what MCT does," and argued that the funding decision could not be separated from the issue of MCT's need to be independent from political control.* MCT proposed some structural changes be implemented to ensure MCT's "independence", including that some grant funds flow directly to MCT (and not through the County treasury), and that a five-year contract with the County be executed.

The County Executive took issue with how MCT had characterized the situation, stating that the County has never attempted to influence MCT's programming decisions. In a written response to MCT, the Executive stated that, "I find your letter to be inaccurate, accusing me of intentions to invade the first amendment rights of your organization, and it is also replete with threats of conduct MCT need not engage in."** The Executive explained how, in his view, services need not be reduced and training fees need not be dramatically increased, and stated that:

> "Many agencies which receive funds through the budget of Montgomery County seek more money than we can provide. Most of them accept that there may be a difference on the amount desired and the recommended allocation. However, need and desire are not synonyms."**

After considerable discussion, the Council increased MCT's funding allocation in the FY89 Cable Plan by approximately $200,000 over that recommended by the County Executive. In approving these additional funds, the Council indicated that $100,000 was to purchase equipment for a news control room; $50,000 was to be used as a one-time grant to support MCT's outside fund raising efforts; and the remaining $50,000 was to increase the funds available in the service contracts, which cover MCT's support for the County Government Channel.

For FY90, the Executive's proposed Cable Plan recommended that MCT be allocated $1,994,000, which was again an increase over the prior fiscal year, but less (by approximately $125,000) than MCT had requested. While this difference led to some public disagreement between MCT and Executive branch officials, the exchange was not as negatively charged as it had been the previous year. As recommended by the Council, the approved FY90 Cable Plan included an additional $75,000 in salaries and operating expenses for MCT. It was at that time that the Council also directed that an amendment to the OLO CY89 Work Program be developed to examine the structural relationship between the County Government and MCT. (See Appendix A for copy of Council Resolution 11-1504.)

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* March 22, 1988 public hearing testimony by MCT Board President.

** April 8, 1988 letter from County Executive to Executive Director of MCT.

E. MCT's Reporting Requirements

Until FY88, there was no formal written requirement that MCT provide the County Government with periodic reports on the expenditure of funds allocated to MCT. Between FY85 and FY88, the information that MCT provided to the Cable Office was on an informal as-requested basis.

Cable Office records indicate that MCT has provided an annual audit to the County every year since FY85, and copies of the Executive Director's quarterly report of MCT's activities since the end of 1986. In addition, during FY86 and FY87, MCT provided a monthly report to the County that showed MCT's expenditures by three spending categories: salaries, operating expenses, and capital outlay. (These monthly expenditure reports from MCT continued through FY89.)

The first written requirement for MCT to provide the County with specific periodic reports was established in the first contract executed between MCT and the County Government for FY88. According to Cable Office staff, the primary reason for incorporating reporting requirements into the contract was to formalize what had previously been done informally, and to clarify what information the County Government had an interest in receiving.

Table 4 (page 33a) summarizes the annual, quarterly, and monthly reporting requirements contained in the FY88 - FY90 master contracts. The data indicate that the detail and frequency of reports required increased during the past three fiscal years. Specifically, between FY88 and FY89, several annual and quarterly reporting requirements were added. For FY90, the majority of the reports that had been required quarterly became required monthly, and additionally became linked to MCT's invoice and receipt of grant funds.* Also in FY90, the three reporting categories for expenditures were modified to include three functional spending categories: public access, news, and fund raising.

According to Cable Office staff, the increase in reporting requirements was a reflection of their interest in being kept more fully informed about how funds allocated to MCT were being spent. From the vantage point of the Cable Office staff, the following factors contributed to an overall feeling that, as the custodian of funds allocated under the Cable Plan, the County Government needed to exercise greater oversight over MCT, which included requesting more detailed information about MCT's expenditures and activities:

- Financial reports were not being submitted on a timely basis. In FY88 and FY89, MCT's monthly budget reports to the County were an average of five weeks late, and MCT's FY89 funding request was submitted to the County three months late.

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* See page 28 for description of how disbursement of grant funds has changed over time.

Table 4

Summary of MCT's Contractual Reporting Requirements**
FY88 - FY90

Reporting Requirements	FY88 Contract	FY89 Master Contract	FY90 Master Contract
A. **Financial Data**			
Financial statement of expenditures by spending category (personnel, operating, office equipment, video equipment, and construction).	M	M	M
Financial statement of revenues and expenditures by spending category (salaries, operating, office equipment, video equipment, and construction).	Q	Q	Q
Financial statement of expenditures by functional spending category (public access, news, fund raising).			M*
Projection of revenues and expenses for the remainder of the fiscal year on both a cash and accrual basis.			Q
Fund raising grant expenditures.		Q	
Cost of municipal equipment repair.		Q	Q
B. **Performance Data**			
Staffing chart showing filled/vacant positions.	Q	Q	Q
Hours of programming by type.	Q	Q	M*
Status of public access program productions.			M*
Number of certified producers, technicians; and number of people remaining on class waiting lists.	Q	Q	M*

Reporting Requirements	FY88 Contract	FY89 Master Contract	FY90 Master Contract
B. **Performance Data** (contd)			
Number of seminar attendees.	Q	Q	M*
Data on use of central studio/control room.			M*
Data on use of edit rooms.			M*
Data on use of video equipment.			M*
C. **Other Data**			
Independent audit.	A	A	A
Affirmative action report.	A	A	A
MFD procurement report.	A	A	A
Updated equipment inventory.		A	A
Descriptive highlight of key activities.	Q	Q	M*
All annual, periodic, or special reports.	Required as issued		
All notices and agendas of the meetings of the MCT Board of Directors, and copies of all notices, newsletters, flyers, and other material provided by MCT to citizens, certified producers or technicians.	Required as issued. Has only been required in FY89 and FY90.		

* Required as part of MCT's monthly invoice submitted to County for reimbursement.

** Key to Reporting Requirement Abbreviations: "M" indicates a monthly reporting requirement; "Q" indicates a quarterly reporting requirement, and "A" indicates an annual reporting requirement.

Source: MCT-County master contracts, FY88-FY90.

- An equipment inventory was submitted five months late. In September 1987, the Cable Office requested an inventory of the equipment that MCT had purchased with approximately $1.4 million that had been provided upfront to MCT at the beginning of the fiscal year (July 1, 1987). The equipment inventory was not submitted to the Cable Office until March 1988.*

- The County's audit of MCT raised certain questions. An audit of MCT conducted by the Audit Section of the County's Department of Finance for the period July 1, 1986 to December 31, 1987 recommended that MCT exercise greater diligence in its financial reporting to the County, and proposed certain improvements to MCT's internal control systems. In addition, the Audit Section noted that during the period of review, MCT had engaged the same CPA firm to do its bookkeeping and to act as its Auditor to render an opinion on financial statements; the Audit Section recommended that for proper independence and segregation, MCT should separate these functions.**

- The Cable Communications Advisory Committee (CCAC) raised concerns about MCT's financial judgment. When the Executive recommended an FY89 budget that was lower than MCT's request, MCT publicly announced its priority list of program services to be eliminated. In a letter to the County Executive and County Council dated April 29, 1988, the CCAC stated their view that MCT's priorities were to eliminate its highest priority programs and services. The CCAC questioned MCT's approach which the CCAC felt did not include a careful and understandably difficult assessment of the full array of services in determining which, if any services needed to be eliminated.

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* In January 1988, after several deadlines for submission of the equipment inventory had passed, the County Government withheld one of MCT's checks. Because MCT's position was that other priorities, including the launch of the Montgomery Channel and the daily news program, had delayed completion of the equipment inventory, the withholding of the check infuriated members of MCT's Board of Directors, who communicated their anger directly to Cable Office staff attending the January 11, 1988, MCT Board meeting. According to Cable Office staff, because of the antagonistic tone of the MCT's Board Members, Cable Office staff decided to stop regular attendance at MCT Board meetings. To maintain communication, a member of the Cable Communications Advisory Committee began attending MCT Board meetings.

** In accordance with this recommendation, MCT has now separated these functions.

- MCT ran a deficit in FY88 and would have run a deficit in FY89 if cost-cutting measures had not been implemented. MCT overspent its budget by $23,000 (1% of MCT's total FY88 budget) in FY88, which the Executive Director of MCT acknowledged had been due to a problem with MCT's bookkeeping. (This accounting problem was resolved soon after it came to the attention of the Executive Director.) In early 1989, projections of MCT's financial position showed that, if corrective actions were not taken, MCT would run another deficit, this time amounting to approximately $100,000. However, MCT was able to institute cost-cutting measures (including reducing the salaries of all senior management personnel) and ended the fiscal year within budget.*

- MCT reported cash flow problems. In FY89, the Executive Director of MCT reported that MCT was facing cash flow difficulties. (See page 57 for further discussion of this issue.)

Other concerns noted by the Cable Office staff included that: MCT's fund raising efforts in FY89 appeared to cost considerably more than they were generating in revenue; and the Cable Office lacked sufficient data about how MCT's facilities were being used, and about how resources were being allocated among MCT's major functions (public access, producing the news program, and fund raising). Additional discussion of the Cable Office's interest in obtaining more detailed and frequent financial and performance data from MCT, and the impact this had on MCT's relationship to the County is contained in the next chapter of this report.

F. Conditions Placed on MCT's Receipt of Funding

The County government has always placed certain conditions on MCT's receipt of funds allocated in the Cable Plan. This section reviews the major requirements and restrictions placed upon MCT, as outlined either in an adopted Cable Plan(s) or a contract(s) executed between the County and MCT.

1. General Restrictions on MCT's Spending. The law that established the Cable Plan process provides that the Cable Plan shall encompass the level and detail customarily used in approving the County budget (Code Section 8A-11(m)). Consistent with this requirement, the FY85-FY90

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* According to MCT officials, the primary cause of the potential deficit in FY89 derived from the structure of the two service contracts (both in their first year). Specifically, the FY89 Cable Plan allocated $348,000 for the two service contracts and actual usage amounted to only $262,369, which meant that MCT received far less than expected in terms of overhead reimbursement under the contracts. On the other hand, according to Cable Office staff, the $348,000 allocation in the Cable Plan had been at MCT's request, and the Executive had recommended a lower amount of $300,000. Although $300,000 would also have been higher than actual usage, it would have created a smaller problem for MCT.

Cable Plans allocated MCT specified amounts of money by spending categories. However, the number of spending categories and the authority granted to MCT to transfer funds among spending categories have changed somewhat from year to year.

The annual Cable Plans adopted during the past five fiscal years allocated funds to MCT in as few as three and in as many as 12 spending categories. Since FY85, two of the spending categories consistently have been salaries and operating expenses; the remaining categories almost all have been for capital expenditures, with the addition of a fund raising category in FY89. In the FY87 Cable Plan, six additional categories were added to specify equipment purchases and structural improvements to MCT's facilities; the FY87 Cable Plan was also the only Cable Plan to separately identify funding for MCT's news program.

The FY89 and FY90 Cable Plans allocated grant funds among the three contracts executed between MCT and the County. Funds allocated for the master contract were further divided among five spending categories: personnel, operating expenses, capital outlay, construction, and fund raising. In FY89, the $50,000 allocated in the fund raising category was designated for use as a one-time fund raising grant, and $100,000 allocated in the capital outlay category was designated for the purchase of news control room equipment. In contrast to the master contract, the FY89-FY90 Cable Plans allocated funds for the service contracts in two lump sums; one amount designated for the Office of Public Information service contract and one amount designated for the Council Office service contract.

The authority granted to MCT to deviate spending from the amounts allocated in the Cable Plans has varied over time. Specifically, in the FY85-FY87 Cable Plans, MCT was directed to follow a "staffing plan" that was approved as part of the Cable Plan. These first three Cable Plans explicitly provided the MCT Board of Directors with the authority to modify the staffing plan, but only within the authorized workyears and funding levels. This particular restriction has not been included in a Cable Plan or contract since FY87.

From FY85 through FY88, MCT's funds were administered by the Cable Office in accordance with the condition upon transfers contained in Chapter 8A for the Cable Plan as a whole; specifically, Section 8A-11(m) grants the County Executive authority to transfer funds between categories designated in the Cable Plan by up to ten percent from one major activity to another. During FY85-FY88, therefore, MCT needed prior approval from the Cable Office to transfer more than ten percent of funds between spending categories approved in the Cable Plan.

Beginning in FY89, MCT's authority to transfer funds between spending categories without prior approval was changed as the result of the Council's discussion of the FY89 Cable Plan. During this discussion, Council Members expressed their view that the County Government should only control MCT's bottom-line funding, and that MCT should be allowed to transfer funds without limit between funding categories, as long as MCT informs the Cable Office of its intent to transfer in advance.

The Council's position regarding MCT's authority to transfer funds between spending categories was incorporated into the FY89 master contract executed between the County and MCT. The FY90 master contract executed between MCT and the County outlines the following conditions on MCT's authority to vary actual expenditures from the total amounts allocated in the Cable Plan and further detailed in the contract:

- MCT must provide the County with 30 days advance written notice of its intent to vary expenditures by more than ten percent from the dollar allocations among spending categories agreed to in the contract. (This condition is consistent with the position of the Council expressed in 1988 but, in contrast to the FY89 contract, the FY90 contract revised the categories from the three spending categories of salaries, operating expenses, and capital outlay to three functional spending categories of public access, news, and fund raising.)

- MCT may not bill the County for more than $160,000 per month or for more than a total of $900,000 for the July 1, 1989-December 31, 1989 period unless approved in advance by the Contract Administrator based on written documentation by MCT of the need. (The total master contract allocation divided by 12 equals $142,500, so that the $160,000 monthly limit provides for some variance in monthly expenditures; and the $900,000 during the first six months of the contract year represents 53 percent of the total grant allocation of $1,711,000.)

- MCT may make dollar adjustments within the amounts established in the contract for the total rate per work day, based upon changes in the salaries of the individual personnel involved. However, MCT must obtain approval from the Contract Administrator to amend the total rate per work day, whereupon the Contract Administrator may authorize increases to by up to ten percent.*

In addition, in contrast to previous years, the FY90 master contract explicitly prohibits the use of grant funds for certain activities. Specifically, the FY90 master contract states that:

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* The total fixed cost per day charges apply to two general categories of salaries and benefits: (1) training, news, and programming/playback functions, and (2) marketing and administration. Therefore, under the FY90 master contract, MCT may vary personnel charges within each of these categories without County approval as long as the total for each category is not exceeded.

"This contract does not include funding for local origination productions, with the exception of the News Program, nor does this contract include funding for MCT staff and operating expenses involved in private fund raising, with the exception of the items listed below:

- Administrative costs involved in supporting fund raising (those personnel who would remain on staff in the absence of fund raising activity).

These fund raising elements are approved in this contract for FY90 only, and any future year's support for fund raising activity will be determined on an annual basis by the County Government."

The rationale behind adding this expenditure restriction in the FY90 master contract and MCT's reaction to it are discussed in the next chapter of this report.

2. Limitations on Equipment Purchases. The FY85 through FY88 Cable Plans required MCT to receive prior approval of certain equipment purchases. The FY85 and FY86 Cable Plans required all equipment purchases that cost more than $5,000 to be reviewed by the County's Interagency Technology Coordination Committee. (The Cable Plans stated that this requirement did not apply to equipment that was "subject of a standing categorical approval.") In FY87 and FY88, this requirement remained the same, except that it only applied to equipment purchases costing more than $50,000.

Since FY88, MCT has not been required to receive prior approval from the County for equipment purchases. However, the FY88 master contract executed between MCT and the County Government specified that if the contract is terminated, then the County would have the right to buy all of the video equipment purchased with cable grant funds since the transfer date of the cable franchise (November 14, 1986) for one dollar. This provision was modified in the FY89 and FY90 master contract to state that:

"All furniture, office equipment, video equipment, vehicles, and other similar types of personal property purchased with funds provided under this contract shall become the property of Montgomery County upon the termination or expiration of this contract."

In addition, the FY89 and FY90 master contracts have provided that MCT may not dispose of any of the video equipment purchased after the transfer date without first offering such equipment back to the County for use in meeting other PEG access objectives.

The master contracts for FY89 and FY90 also included provisions regarding MCT's ability to pledge video equipment as collateral on any loan or other financial instrument. Specifically, video equipment titled to MCT in the County/MCT Video Transfer Agreement of November 25, 1986* may be used by MCT as collateral without County approval; however, any equipment purchased with County funds after the transfer date (November 14, 1986) may be titled to MCT, but not used as collateral on any loan without County approval.

3. Financial Disclosure. Since FY89, the annual Cable Plan has stipulated that MCT's funding is contingent upon members of MCT's Board of Directors and MCT's Executive Director filing confidential financial disclosure statements with the Ethics Commission. This provision is consistent with MCT's bylaws, which require that each MCT director, as a condition of serving on the Board, file an annual sworn, confidential financial disclosure statement, and a political campaign activity disclosure statement with the Ethics Commission. (See pages 17-18.)

The consequences of not complying with the specified financial disclosure requirements have been stated in the Cable Plan. According to General Provision Number 7 of the FY90 Cable Plan:

> "The County may not expend any funds allocated to MCT nor enter into a contract with MCT for FY90 services funded by this Plan, until such time as all the members of the Board of Directors and the Executive Director of MCT have filed a confidential financial disclosure statement with the Ethics Commission for the 1988 calendar year."

In March 1987, the MCT Board of Directors recommended that the financial disclosure requirement in MCT's bylaws be eliminated. MCT's view was that the current financial disclosure requirement treats MCT like a County advisory committee, and should therefore be removed to "reinforce MCT's independence."** One MCT Board member refused to file a financial disclosure statement, and subsequently resigned from the MCT Board in early 1988. The County has not yet acted on MCT's request to amend its bylaws, pending action on amendments to Chapter 8A, Cable Communications.

4. Affirmative Action Plan and MFD Procurement Procedures. Every Cable Plan since FY86 has required the MCT Board of Directors to adopt an affirmative action plan and MFD procurement procedures in accordance with the franchise agreement and the County Code. Although it is not explicitly stated, presumably this requirement means that if such policies are not adopted, then the County Government can withhold MCT's funding.

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* See explanation of this agreement on page 23.

** April 2, 1987, memo from Executive Director of MCT to Cable Office staff.

5. "Use it or Lose it". Since FY86, MCT's funding has been on what is commonly referenced as "use it or lose it" funding. This means that, similar to how County Government departments and many County contracts are handled, resources that have been approved for spending but are not encumbered by the end of the fiscal year must be returned to the County. In MCT's case, the Cable Plan specifies that any unencumbered funds are reallocated in subsequent Cable Plans.

In an October 24, 1989 memorandum to OLO, the President of the MCT Board stated that MCT would prefer the elimination of the "use it or lose it" condition on MCT's funding. According to the MCT President, the current practice encourages waste and imprudent spending at the year's end.

6. Other general conditions placed on MCT's receipt of Cable Plan funds. The FY90 master contract executed between MCT and the County Government also contains the following general conditions on MCT's receipt of funding, which are standard provisions included in many County contracts:

- MCT may not assign or transfer the contract, except as expressly authorized in writing by the County;
- The County has the right to monitor, inspect, evaluate, or test all supplies and services called for by the contract at all reasonable places and times;
- The County may examine MCT's and any first-tier subcontractor's records relating to work performed under the contract to determine and verify compliance; and
- The County may terminate the contract if MCT defaults in the performance of the contract, fails to make "satisfactory progress" in the prosecution of the contract, or endangers the performance of the contract.

G. Other Aspects of MCT's Relationship to the County

1. MCT's Bylaws and Articles of Incorporation. As reviewed in the previous chapter (see page 17), MCT's original bylaws and articles of incorporation were approved by the County Executive and County Council as an attachment to the approved FY85 Cable Plan, adopted July 30, 1984. In addition to outlining the structure of MCT's Board of Directors and establishing guidelines on issues such as the minimum number of Board meetings and the annual election of Corporate officers, the bylaws and articles established the following additional connections between MCT and the County Government:

- That any amendments to these documents be approved by two-thirds of the directors in office, the County Council (by motion or resolution), and the County Executive;

- That each MCT Board Member file an annual sworn financial disclosure statement and a political campaign activity disclosure statement with the County Ethics Commission; and

- That MCT Board Members may not be employed by any cable television franchisees of the County, in a position under exclusive control of the Executive or Council, or by any individual or corporation (other than MCT) for representation before the County on any matter related to cable television.

On March 16, 1987, the MCT Board of Directors voted to amend MCT's bylaws. In accordance with the current bylaw requirement, MCT then submitted the package of amendments to the County Executive and County Council for approval. Included among the changes endorsed by the MCT Board of Directors were the following amendments:

- Deletion of the requirement that the County Executive and County Council approve bylaw changes;

- Deletion of the financial and political activity disclosure requirements, and limitations on employment of directors for one year following their term;

- An increase in the number of voting Board members from 15 to 24, by adding three additional at-large directors, by granting voting status to the non-voting representatives from Rockville, Takoma Park, the Municipal League, MCPS, Montgomery College, and the cable company and by eliminating the non-voting seats reserved for representatives of the County Executive and County Council; and

- Revision of the bylaws to permit municipalities to nominate elected officials to the MCT Board.

As noted earlier, MCT's proposed bylaw amendments are still pending action by the County Council and County Executive. The County Government postponed action on MCT's bylaw changes pending completion of amendments to Chapter 8A, <u>Cable Communications</u>. (Bill 26-89, Cable Communications-General Revisions was introduced on May 5, 1989 and is currently before the Council for consideration.)

2. <u>MCT Employees Belong to the County Government Employees' Health Plan</u>. Another link between MCT and the County Government is that MCT employees belong to the County Government's health plan. Under the current arrangement, the County bills MCT on a monthly basis for an amount equal to both the employer's and employees' shares. According to Department of Personnel staff, the benefit of belonging to the County's health plan on a similar basis has been extended to employees of a number of other entities including: Strathmore Hall Foundation, the Housing Opportunities Commission, and the Montgomery County Revenue Authority.

The ability of MCT employees to participate in the County Government's health plan is not formalized in a written legal document; it is not included either in the Cable Plan or in the contracts executed between MCT and the County. Although it is beyond the scope of this report to quantify what allowing MCT employees to belong to the County's health plan is exactly "worth", extending the County's health plan coverage to MCT employees is clearly a benefit to MCT.

3. Recent Disagreement over MCT's Contract with JC Penney Home Shopping Service. On September 18, 1989, MCT began cablecasting the JC Penney home shopping service on the Montgomery Channel (Channel 21) for 14 hours per day. The County Government was informed of this decision in a letter received on September 19, 1989. From the point of view of the County Government, MCT's decision to cablecast the JC Penney home shopping service on Channel 21 raised serious legal, contractual, and policy issues; this view was shared by the County's cable franchisee, Cable TV Montgomery (CTM).

A complete analysis of the legal and policy issues raised by MCT's decision to cablecast the JC Penney home shopping service is beyond the scope of this report. However, the following summary of this recent disagreement between MCT and the County is included because it illustrates an evident lack of consensus on an important operating issue, and because the controversy has contributed to the current friction between MCT and the County.

County Government officials objected to MCT's decision to cablecast the JC Penney home shopping service on Channel 21 for several reasons. The County Government argued that MCT's decision had the effect of subleasing channel capacity on Channel 21 to a commercial service, and constituted a violation of MCT's master contract with the County. In particular, the County Government held that MCT breached the FY90 contract requirement that MCT will "produce and schedule two community access channels," and the contract specification that Channel 21 must be "devoted to showing the best of community-oriented programming." The County also argued that MCT's action violated the provision in the master contract that requires MCT to obtain prior County approval before subleasing any of the work elements of the contract.

On September 27, 1989, Cable TV Montgomery (CTM) advised the County in writing of their view that the carriage of JC Penney service on Channel 21 violated both the franchise agreement and federal law. Also, CTM's position is that, from a public policy standpoint, using a public access channel for commercial purposes violates the public purpose of providing free channel capacity to local franchising authorities. CTM formally requested that MCT stop cablecasting not only the JC Penney shopping service, but all advertising and commercial programming on Channel 21.

From MCT's point of view, the decision to cablecast the JC Penney home shopping service on Channel 21 was neither a violation of MCT's master contract nor the franchise agreement. In a September 25, 1989 letter to the Cable Office, the President of MCT's Board of Directors stated MCT's view that carrying the JC Penney home shopping service was consistent with the role of the Montgomery Channel as a "local origination" channel, not a traditional public access channel. Moreover, the President of MCT's Board of Directors maintained that MCT's contract with JC Penney was consistent with MCT's goal of obtaining outside revenue in support of MCT's mission of providing community-oriented programming.

On October 23, 1989, as the result of a series of meetings held among Council, Executive, MCT, and CTM representatives, MCT's Executive Director informed the Cable Office in writing that MCT would take the JC Penney home shopping service off the air "with all deliberate speed, consistent with our contractual obligations to JC Penney". On October 27, 1989, MCT reduced the number of programming hours of the JC Penney shopping service on Channel 21 from 14 hours per day to five and one-half hours per week, and continued to pursue total cancellation of the JC Penney programming.

On December 4, 1989, because the JC Penney shopping service was still being cablecast on Channel 21, the County Government sent a formal written notice to MCT that the corporation was in default of the master contract. On December 22, 1989, MCT stopped all cablecasting of the JC Penney home shopping service. On December 29, 1989, the Cable Office sent MCT a notice that, because MCT had ceased carriage of the JC Penney programming, the County will not take further enforcement action at this time.

As of this writing, the JC Penney issue apparently has been resolved to the extent that the shopping service is no longer being cablecast on Channel 21. However, the events of the past three months raised some broader issues that are not yet resolved. In particular, the cablecasting of the JC Penney home shopping service on Channel 21 raised legal and policy questions about whether the PEG channels reserved for the County Government under Section 30(B) of the franchise agreement can be used for any commercial purpose, including spot ads, infomercials, and satellite programming that contains ads.*

A review of Council minutes indicates that, in regard to advertising in general, it appears to have been the County Government's position to encourage MCT to raise outside funds. The County, however, left it to MCT to determine the best sources of outside revenue, whether that be training fees, membership fees, production services, sales of goods such as videotapes, corporate sponsorship of programs, or advertising. The County Government and CTM officials have been aware that MCT has carried certain ads on Channel 21 since early 1988.

According to the Cable Office, the Executive branch is now in the process of drafting an Executive Regulation that will outline the County Government's policy on commercial use of all PEG channels. This Method (1) Executive Regulation is expected to be submitted to the Council for consideration during the first half of 1990.

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* See Appendix D for excerpt of Section 30 of franchise agreement, as amended on November 14, 1986.

VI. STRUCTURAL ISSUES TO BE RESOLVED

A. Introduction

The numerous interviews that OLO conducted during the course of this study revealed significant differences of opinion about how to structure MCT's relationship to the County. The differences of opinion have caused disagreements between County Government and MCT officials concerning fundamental structural issues such as MCT's bylaws, contract terms, the method of fund disbursement, and the specifics of MCT's accountability to the County. These controversies have in turn strained the day-to-day communications and overall working relationship between Cable Office staff and MCT officials.

During interviews with OLO, the Executive Director of MCT, members of the MCT Board of Directors, and Cable Office staff voiced frustration and discontent with the friction that has developed. All parties expressed an interest in resolving their differences of opinion and renewing a constructive working relationship between the County Government and MCT.

Section B of this chapter provides some general analysis as to why friction developed between County Government and MCT officials. The remaining sections of this chapter discuss the following major issues concerning MCT's relationship to the County that have been the subject of disagreements between the County and MCT and that need to be resolved:

- <u>Issue #1</u>: Should amendments to MCT's bylaws and articles of incorporation continue to require County Council and County Executive approval?

- <u>Issue #2</u>: What are the respective roles of MCT and the County Government in determining MCT's allocation of cable grant funds?

- <u>Issue #3</u>: What is the appropriate level of accountability for the County Government to require from MCT in return for funding?

- <u>Issue #4</u>: How should cable grant funds for the master contract be disbursed from the County Government to MCT?

- <u>Issue #5</u>: In exchange for funding, what requirements or conditions, if any, should be placed by the County Government on MCT?

OLO's recommendations for resolving these issues are contained in Chapter VIII.

B. Why did disagreements about the structure of MCT's relationship to the County government develop?

This section discusses three general reasons why disagreements about the structure of MCT's relationship to the County Government developed during the past three years.

Formal agreement about the respective roles of MCT and the County Government on all issues was not reached at the time MCT was created.

In 1984, when the County Government made the formal decision to delegate the management and operation of public access to a non-profit corporation, the basic parameters of this corporation's relationship to the County Government were discussed. However, at the time MCT was established, the decision-making focused on how to launch the corporation, and not on the details of how the corporation would operate five years into the future.

The closest thing to a blueprint for MCT's ongoing relationship to the County Government was the Report of the Community Access Task Force, issued in March 1984.* Although many of the Task Force's recommendations were implemented, the County Government never officially endorsed everything contained in the Task Force Report. An example of a Task Force idea that was not implemented is the recommendation that MCT's initial Board of Directors be appointed by the County Executive and confirmed by the Council, and that a Programming Committee be appointed to work alongside the Board of Directors. In addition, although recommended by the Task Force, MCT and the County have not entered into a multi-year contract and a formal performance evaluation of MCT has never been conducted.

Even though the Report of the Community Access Task Force was never formally endorsed by the County, interviews with MCT Board Members suggest that the document nonetheless is perceived by some Board Members to represent the County Government's intentions. In this respect, the Report of the Community Access Task Force established certain expectations about MCT's future funding and ongoing relationship to the County.

Although frequently described as an "independent non-profit corporation," MCT is not totally "independent" from the County Government.

Since its incorporation in 1984, MCT has frequently been described as an "independent, non-profit corporation". Perhaps because the term "independent" was not defined explicitly at the time MCT was established, different interpretations of MCT's "independence" have caused friction between MCT and the County Government officials.

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* For more details about the Report of the Community Access Task Force, see page 15.

The history of MCT indicates that, in certain respects, MCT was created to be "independent"* of the County Government. However, the record shows that in certain other ways, MCT has never been completely "independent" of the County Government. The degree of MCT's "independence" from the County is more fully discussed below.

The Community Access Task Force Report recommended "an independent, non-profit, tax exempt corporation (to be named Montgomery Community Television, Inc.) as the structure best suited to manage and promote public access free from political influence". A review of the Task Force Report suggests that by "independent" the Task Force meant that MCT should be: "a non-political, community-based, non-governmental entity that would be free of government control over programming content and scheduling, and perceived by the public as fair and impartial in its programming decisions and interaction with the community."**

Consistent with the Community Access Task Force's recommendation that MCT be a non-governmental, community-based entity, MCT was created in September 1984 as a non-profit tax-exempt corporation under State law; MCT's bylaws established a Board of Directors composed largely of representatives from community organizations, and the Board was charged with the general responsibility of managing the affairs of the corporation. Consistent with the Community Access Task Force's recommendation that MCT be non-political and perceived by the public as fair and impartial, MCT's articles of incorporation and bylaws required MCT to remain politically neutral, and required MCT officials to file financial and political activity disclosure statements.

Also consistent with the Community Access Task Force's recommendation that MCT be free of government control over programming and scheduling, the introductory section of the master contract executed between the County Government and MCT for the past three fiscal years has included the following statement of County policy:

> "...the County recognizes the independence of MCT with regard to all programming decisions and scheduling on the channels that it manages;"

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* Webster's New World Dictionary (1974, 2nd College Edition) defines "independent" as: "1. free from the influence, control, or determination of another or others; specifically, (a) free from the rule of another; controlling or governing oneself; self-governing (b) free from influence, persuasion, or bias; (c) relying only on oneself or one's own abilities, judgment,etc.; (d) not adhering to any political party or organization; (e) not connected or related to another; separate; 2. (a) not depending on another or others, especially for financial support; (b)large enough to enable one to live without working; (c) having an independent income".

** Report of the Community Access Task Force, March 1984, page 7.

Examples of how MCT is "independent" of the County Government include that MCT was established as a non-profit corporation with its own Board of Directors, and that the County Government recognizes (in a legal document) MCT's "independence" with regard to programming decisions and scheduling. In addition, cable grant funds have been allocated to MCT in the Cable Plan in broad spending categories, and not on a line-by-line basis.

However, the following significant examples of how MCT is not "independent" of the County Government must also be recognized:

- MCT depends upon the County for its channels. Under the terms of the current franchise agreement, 13 channels on the cable system are reserved for the County Government, and the County Government is authorized to assign these channels for public, educational, or government use.* In this fundamental way, unless MCT was able to lease a channel(s) directly from the cable company, MCT (like other PEG channel operators) depends upon the County Government for the authority to cablecast on one or more of the cable channels allocated to the County.

- MCT depends upon the County for revenue. The legislative record of the County's discussions about establishing MCT indicate that it was never envisioned that the entity managing public access would be financially "independent" from the County. Instead MCT would receive grant moneys (provided to the County under the terms of the cable franchise agreement) allocated on an annual basis in the Cable Plan and appropriated by the Council. Although MCT has, in recent years, received increasing revenue from other sources, funds allocated through the annual Cable Plan continue to account for almost 90 percent of MCT's total budget.

- Grant funds are not allocated unconditionally. As reviewed in the previous chapter, the County Government has never provided funds to MCT unconditionally. It can be said that the various requirements and conditions that have accompanied the County's granting of funds to MCT have infringed upon MCT's total "independence" in deciding how resources are allocated. It is important to note, however, that except for requiring the production of a daily 30-minute news show about County affairs, the conditions imposed by the County Government have not concerned any programming decisions.

- Additional factors link MCT to the County. There are additional links between MCT and the County Government that can be said to affect MCT's "independence". As described in the previous chapter, these include:

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* Section 30(B) of the franchise agreement specifies the uses of seven of the 13 PEG channels (one for County Government use, two for Educational access, three for municipal use, and one for public access); the remaining six channels are reserved for other "PEG" uses. Section 30 of the franchise agreement is attached as Appendix D.

- MCT's bylaws and articles of incorporation can only be amended with the approval of the County Council and County Executive;

- MCT's Board of Directors are required to file financial and political activity disclosure statements with the County's Ethics Commission, and are subject to certain provisions of the County's ethics law, "as though the director were an employee or public official";

- MCT's bylaws provide that the County Council and County Executive can each appoint one ex-officio non-voting member of MCT's Board of Directors; and

- If the County's contract with MCT is terminated, then any equipment that MCT purchased with funds allocated in the Cable Plan since November 1986 becomes the property of the County; and during the term of the contract, this equipment cannot be pledged separately by MCT as collateral for a loan from a commercial bank.

<u>The transfer of the cable franchise in November 1986 affected MCT's relationship to the County Government</u>.

The friction between County and MCT officials seems to have developed primarily since the transfer of the County's cable franchise in November 1986. In retrospect, it appears that a number of factors related to the transfer explain the evolution of certain disagreements between County and MCT officials.

As described earlier in this report, the 1986 transfer of the County's cable franchise (from Tribune-United to Montgomery Cablevision Limited Partnership) resulted in a reduction of financial resources available for public, educational, and government access. In addition to reducing the amount of available financial resources, the revised franchise agreement changed the flow of cable grant moneys. As described in the previous chapter, instead of receiving a check directly from the cable company, under the terms of the current franchise agreement, all cable franchise grant and settlement moneys flow through the County treasury.

Because the amount of grant money allocated to MCT and the other PEG operators continued to be established in the annual Cable Plan, County officials perceived the change in the flow of funds largely as an administrative one. This view, however, was not shared by MCT officials. In addition to expressing frustration about not being included in the negotiations with the cable company about this provision, some MCT Board Members perceived that this change placed the County Government in a greater position of "control" over MCT's expenditures.

MCT's perception of the County's "control" over MCT was furthered by the following two additional changes, which were implemented as secondary effects of the cable franchise transfer:

- In FY88, because the County Government started disbursing funds directly to MCT, the County required that an annual contract be executed with MCT; the contract process had the effect of formalizing certain aspects of MCT's relationship (e.g., reporting requirements, deadlines for submitting funding requests) with the County that had, in contrast, been informal in previous years.

- In FY89, to be consistent with how other contractors were remunerated, the County Government changed the method of disbursing funds to MCT such that MCT no longer received quarterly payments in advance. According to MCT officials, changing the disbursement schedule was the primary cause of certain cash flow problems. These problems in turn caused the County to be concerned about MCT's financial situation.*

In addition, the transfer of the cable franchise in November 1986 coincided with increased attention by the County Government to the administration of the cable franchise in general. This general increase in oversight extended to the allocation of grant and settlement funds to MCT. During the past three years, the Cable Office staff has instituted what they perceived to be appropriate improvements in general administration and oversight. However, at the same time, MCT officials perceived that at least some of these changes represented unjustifiable intrusion into MCT's "independence".

Finally, another factor that likely affected the quality and regularity of communication between MCT and County staff during the past three years was that in late 1986, MCT moved its operations from 27 Courthouse Square to MCT's current location at 7548 Standish Place, north of Gude Drive. It has been noted by both MCT and Cable Office staff that the physical proximity of MCT prior to 1987 afforded many more opportunities for informal communication between the County and MCT at the staff level.

The following five sections identify and discuss the major structural issues that need to be resolved.

C. <u>Issue #1: Should amendments to MCT's bylaws and articles of incorporation continue to require County Council and County Executive approval?</u>

MCT's bylaws and articles of incorporation currently require that any amendments to these documents be approved by two-thirds of the MCT Board of Directors, by the County Council (by motion or resolution), and by the County Executive. This requirement has been in MCT's bylaws and articles since these documents were originally approved both by the County Council and County Executive (as part of the FY85 Cable Plan), and by MCT's initial Board of Directors.

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* This issue is discussed in detail, beginning on page 55.

For the past few years, the MCT Board of Directors has advocated that this particular bylaw requirement be eliminated. In March 1987, the MCT Board approved a package of amendments to MCT's bylaws, which included deleting the provision requiring County Council and County Executive approval of future bylaw amendments.

As of this writing, MCT's requested bylaw changes are pending action by the County Government. Action was postponed because of the County's decision to consider MCT's bylaws amendments simultaneous with comprehensive amendments to Chapter 8A, Cable Communications. Bill 26-89, Cable Communications-General Revisions, introduced on May 2, 1989, is scheduled for public hearing in early 1990.

In an October 24, 1989 memorandum to OLO, subject "MCT's Future Relationship with County Government", the President of MCT's Board of Directors cites the inability of MCT to amend its own bylaws as a "critical concern." Specifically, the MCT President writes that, "The MCT Board should be totally free to amend its own Articles of Incorporation and Bylaws without concurrence by local government." In addition, MCT officials have stated on several occasions that requiring local government approval of MCT's bylaw changes, "may be contrary to Maryland corporation law."

A review of the legislative record suggests that the provision requiring that future bylaw amendments be approved by the Council and Executive was included because MCT was a new and, at that time, an unknown entity. It was anticipated that MCT would receive large sums of grant dollars, and would be in charge of an important new medium of communication in the County. Requiring that future bylaw and article changes be approved by the County Government was seen as a way that the local government officials could ensure that MCT continues to be community-based, and continues to remain politically neutral.

The attorney who drafted MCT's bylaws and articles of incorporation maintains that requiring that future amendments be approved by the Council and Executive was entirely legal under Maryland corporation law. Furthermore, he described the provision as a restriction that was approved by MCT's initial Board of Directors.

If MCT's bylaws and articles were to be amended to permit future amendments without the concurrence of the Council and Executive, then the County Government would be removing one of the connections between MCT and the County that has been there since MCT's incorporation. The MCT Board could then amend MCT's bylaws and articles of incorporation to modify such things as: the composition of MCT's Board; the current financial and political activity disclosure requirements; and the method of electing Board officers.

D. Issue #2: What are the respective roles of MCT and the County government in determining MCT's annual funding level?

The process established by law for approving the annual Cable Communications Plan, in many respects, parallels the County's annual operating budget process. To minimize duplication of staff and Council effort, since

FY88, the County Executive's proposed annual Cable Plan has been published in the Executive's recommended operating budget document, and the Council has reviewed and adopted the Cable Plan simultaneous with the Cable Office budget.*

Through interviews, MCT officials expressed what can be described as both pragmatic and philosophical concerns about the current Cable Plan process. Specifically, MCT officials voice the following concerns:

- That the current process assures MCT of funding for only one year at a time, which makes it difficult for MCT to do long-range financial planning dependent upon the assumption of a stable source of funding;

- That the current process forces MCT to submit a funding request in October for a fiscal year beginning nine months into the future; and that it is difficult for MCT to predict resource needs so far in advance; and

- That the current process requires the County Executive and County Council to make a decision regarding MCT's funding on an annual basis, which places the local government officials in a position of actual or perceived influence over the content of MCT's programming. Of particular concern is any perception of influence over MCT's daily news program, which by its nature should be independent, non-political and balanced in its presentation of the news.

MCT's concern that the annual Cable Plan process places the County Government in an actual or perceived position of influencing MCT's programming decisions has been publicly expressed a number of times during the past several years. In testimony before the Council on the proposed FY89 Cable Plan on March 22, 1988, the President of MCT's Board voiced MCT's view that because, "the power to withhold funds is the power to control and destroy. . . the matter of MCT's funding cannot be viewed separately from the issue of MCT's independence from political control." At that time, MCT proposed that the funding process be modified in three ways:

- That a portion of grant funds flow directly from the cable operator to MCT;

- That MCT enter into a five-year contractual arrangement with the County under which MCT would provide specific, quantifiable services in exchange for a prescribed level of funding; and

- That MCT commit to raising significant outside revenue to reduce MCT's financial dependence upon the County.

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* As noted in Chapter V (see page 30), Bill 26-89 proposes to delete the Cable Plan and formally incorporate the allocation of grant funds into the annual operating budget.

In an October 22, 1989, memorandum to OLO, subject "MCT's Future Relationship with County Government", the President of MCT's Board continues to advocate a restructuring of the flow of funds. MCT officials suggest that the grant equal to 1.5 percent of gross revenues should come directly to MCT and be used to fund the costs of producing the news program. The advantages cited by the MCT Board President of not subjecting funding of the news program to an annual appropriation action are that: "This approach would remove the County from direct monitoring of this project. This would insulate the news program from any real or perceived influence over content by removing it from the annual appropriation process."

The County Government's response to MCT's concerns has been that the County can make funding level decisions without infringing upon MCT's ability to make "independent" program content and scheduling decisions. In an April 8, 1988 letter to the Executive Director of MCT, the County Executive stated that:

> "At no time has the Montgomery County government, directly or indirectly, attempted to influence MCT in who it will hire; who will supervise the people hired; what events or trends or individuals will be covered by programming; or how individuals, organizations or events will be treated in the programming of MCT.
>
> "Government is the custodian of funds extracted from its citizens. whether the funds come in the form of direct taxes imposed by the County or are funds paid over to the County franchisee out of fees imposed on our citizens. So long as I am County Executive, I will do everything in my power to prevent any recipient of funds from this County from avoiding responsibility of honest, efficient use of such funds. This includes assurances of freedom from conflict of interests, and an explanation of how these funds have been, and will be used."

The Cable Office is responsible for recommending to the County Executive and County Council how a relatively large sum of grant dollars received from the franchisee (estimated to total $3.5 million in FY90) should be allocated among the various PEG operators: MCT, MCPS, Montgomery College, the University of Maryland, the County Government, and the participating municipalities. From the Cable Office staff's point of view, the funding information requested from MCT is not substantially different from that requested from the other PEG operators interested in receiving grant funds through the Cable Plan. In addition, the Council's review and decisions on funding for MCT is in no greater detail than it is for many other functions.

In addition to concern that MCT's ability to operate "independently" is impaired by a process that requires an annual appropriation decision, MCT has also expressed concern that the current Cable Plan process presents some planning and preparation problems for MCT. As described earlier in this report (see page 30), deadlines for MCT's funding request submission and the details of what information had to be provided to the County Government were not written down until the FY88 contract was executed between MCT and the County.

From the Cable Office's point of view, to parallel the Cable Plan process with the County Executive's annual operating budget schedule makes for more efficient use of staff, Executive, and Council time, and allows for all cable-related resource decisions to be discussed and finalized as a total package. From MCT's point of view, however, incorporating the discussion of the Cable Plan into the County's budget cycle makes MCT officials feel as though MCT is being treated like a County agency. Further, MCT officials claim it is difficult for a relatively small, non-profit corporation like MCT to submit a funding request so far in advance of the next fiscal year.

E. <u>Issue #3: What is the appropriate level of accountability for the County Government to require from MCT in return for funding?</u>

Assuming that MCT continues to receive funds through the Cable Plan as a non-competitive grantee, one issue that needs to be resolved concerns what information is reasonable and appropriate for the County Government to require MCT to report to the Cable Office on a regular basis.

Since FY85, the annual Cable Plan has allocated MCT a significant portion of the grant and settlement funds received by the County through the County's cable franchise agreement.* While MCT has competed for available funds with the other PEG operators (e.g., MCPS, Montgomery College, University of Maryland, the municipalities), MCT has not competed against others to receive funding for the functions it currently performs, which include: managing two access channels; producing a local daily news program; training community producers and technicians; maintaining and repairing equipment; providing playback and character-generator services on MCT's channels and the municipal channels; and providing staff and technical support for the County Government Channel.

The details of MCT's reporting requirements to the County have caused considerable friction between MCT officials and the Cable Office staff, especially during the past two years. While all parties agree with the statement that, "MCT needs to be accountable for the funds its receives through the County Government," there is disagreement over the frequency, detail, and timing of reports.

As reviewed in the previous chapter (see page 33), MCT's reporting requirements to the County have changed over time. Although MCT has always provided the County with certain information about activities and expenditures, there have been revisions over time both in the frequency and detail of what the County requires. What began in FY85 as unwritten and informal reporting to the County evolved into written reporting requirements

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* For a review of MCT's funding levels, see page 27 and <u>Table 2</u> on page 27a.

outlined in a contract with explicit submission deadlines. This fiscal year (FY90), there is added pressure on MCT to submit timely and complete reports because, for the first time, all three of MCT's contracts are structured as cost reimbursement contracts. This means that MCT must submit a monthly invoice of expenditures for which MCT is then reimbursed. In order for MCT to receive payment for services rendered, the invoice must also be accompanied by a report of certain performance measures.

The Cable Office staff's increased interest in obtaining information about MCT's expenditures and activities was in response to a series of incidents that raised concern about MCT's financial management of resources, over 90 percent of which come from grants allocated in the Cable Plan. As detailed in the previous chapter, factors that contributed to an overall feeling that the Cable Office needed to exercise increased oversight over MCT included: MCT's record of not consistently submitting required reports on a timely basis; comments by the County's Audit Section concerning MCT's internal control systems; concerns raised by the CCAC about MCT's financial judgment; the fact that MCT ran a deficit in FY88 of $23,000 caused by bookkeeping errors and would have run a deficit in FY89 if cost-cutting measures had not been implemented in the fourth quarter; and MCT's reported cash flow problems since FY89.*

The Cable Office staff's reaction to these incidents was to implement what they perceived to be appropriate increases in oversight, which included gathering more detailed information about how MCT was spending County-allocated resources.** Specifically, based upon interviews with Cable Office staff and a review of Cable Office records, it appears that a number of reporting requirements were added to MCT's FY90 contractual obligations for the following reasons:

- They were seen as a reasonable level of detail to be provided from a contractor receiving a large sum of money on a non-competitive basis;

- They were designed to help the County government evaluate how well MCT was achieving its major goals and objectives, as established in the Cable Plans and the contracts;

- They were designed to provide the County government with additional information with which to judge MCT's requests for additional financial assistance; and

- Because the method of payment was shifted to cost reimbursement, MCT's monthly invoice had to detail how funds had been expended in order for the Cable Office to approve payment.

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* For more details, see pages 33-35.

** In addition, the FY90 contract placed a number of conditions on the rate at which MCT could spend County allocated resources. These conditions are discussed later in this chapter.

However, according to MCT officials, the additional reporting requirements in the FY90 master contract represented unwarranted interference by the County Government into MCT's business affairs. In interviews with OLO, a majority of MCT Board Members expressed the feeling that, under the reporting requirements of the FY90 contract, the MCT Board no longer has final authority for the company's budget. It is perceived that the Cable Office is frequently in a position to "micro-manage" MCT; examples cited by MCT officials include: requiring MCT to seek prior approval from the County for increases in the total fixed cost per day charges; and requiring MCT to inform the County 30 days in advance of any transfer (exceeding 10%) between spending categories. (See page 37 for a more detailed description of these requirements.)

It appears that from MCT's point of view, the most objectionable aspects of the FY90 master contract are the frequency of reporting and the structure of the FY90 master contract on a cost reimbursement basis. Monthly reports are seen as significantly more burdensome than quarterly reports, and MCT officials perceive the cost reimbursement structure as placing the Cable Office staff in a position to exercise direct authority over MCT's expenditures. When asked why MCT Board Members agreed to enter into a contract that they so strongly felt imposed unreasonable requirements upon the corporation, MCT officials responded that they felt pressured into signing the master contract before the start of the fiscal year, in order to continue receiving much needed funding. MCT officials note that the pressure to sign the contract was due largely because negotiations took place during the last month of the fiscal year.

According to Cable Office staff, MCT had ample opportunity (four weeks) to negotiate the terms of the FY90 master contract. Moreover, the Cable Office takes issue with MCT's characterization of the FY90 contract as placing the County in a position to "micro-manage" MCT's budget. Although the FY90 master contract added certain reporting requirements and tied the receipt of MCT's funds to the submission of a monthly invoice that details expenditures, according to the Cable Office, nothing in the FY90 contract takes away the MCT Board's final authority over the budget. Under the terms of the FY90 contract, resources can be shifted among spending categories as long as the Cable Office is notified 30 days in advance; and from the point of view of the Cable Office, the dollar amounts for each category outlined in the contract were not imposed by the County, but rather were the result of a legitimate contract negotiation.

F. Issue #4: How should cable grant funds for the master contract be disbursed from the County Government to MCT?

1. Description of Fund Disbursement. As reviewed earlier in this report, the allocation of cable grant funds to MCT has always been subject to annual appropriations action, and the County Council's and County Executive's decisions contained in the annual Cable Plan. However, since the transfer of

the cable franchise in November 1986, MCT has received grant and settlement moneys directly from the County Government instead of directly from the franchisee. This change was one of the terms contained in the Settlement Agreement of July 1986.*

In addition to a restructuring of the flow of funds, the method of disbursing funds allocated to MCT in the Cable Plan also changed over the past five years as follows:

- <u>FY85 through FY88</u>: MCT received funds on a quarterly in advance basis, meaning that one-fourth of MCT's total allocation for the fiscal year was sent to MCT at the beginning of each quarter (July 1, October 1, January 1, April 1). During these years, any portion of the grant funds not encumbered by the end of the fiscal year was subtracted from the following year's payments to MCT. MCT was, however, allowed to keep all of the interest earned during the fiscal year on County-allocated funds.

- <u>During FY89</u>: MCT received funds for the master contract monthly in advance, meaning that one-twelfth of MCT's total grant allocation under the master contract for the fiscal year was sent to MCT on the first of each month. Again, MCT was allowed to keep all interest earned, but any portion of grant funds not encumbered during the fiscal year was to be subtracted from the following year's payments.

FY89 was also the first year that MCT's support for the County Government Channel was separated from the master contract into two additional service contracts; these two service contracts were structured on a cost reimbursement basis, with a 16.7 percent advance paid on the first day of the fiscal year.

- <u>For FY90</u>: This fiscal year, all three of MCT contracts with the County are structured on a cost reimbursement basis. Specifically, this meant that MCT received a 16.7 percent (two month) advance for both the master and service contract allocations on July 1, 1989; this advance must be repaid to the County during the fourth quarter of FY90. The remaining portion of MCT's payment for services under both the master and service contracts are disbursed on a cost reimbursement basis, meaning that each month MCT submits an invoice to the Cable Office of actual expenditures incurred. The invoice for the master contract is approved for payment by the Cable Office, and the invoice for the service contracts are approved respectively for payment by the Office of Public Information and Council staff.

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* See page 21 for more details about the Settlement Agreement.

The FY89 master contract established certain personnel and operating costs that are billed on a fixed monthly basis (e.g., public access training staff, playback staff, news program staff, and monthly rent payment), and others that are billed on a variable basis from month to month. MCT's funding continues to be on a so-called "use or lose" basis.

As explained earlier in this report, according to the Director of the Department of Finance, the decision to change the method of disbursing funds to MCT was part of a County Government-wide effort to implement "good fiscal controls", and in particular, "reasonable, consistent, and prudent fiscal controls on advance payments."* From the point of view of the Department of Finance, a side benefit to the County of a central and consistent control of advance payments was an increase in the amount of interest earned by the County Government.

2. Discussion. The record shows that since FY89, MCT has faced periodic cash flow difficulties. While MCT officials maintain that the primary cause of MCT's cash flow problems was the change in the County's method of disbursing grant funds, this view is not shared by County Government officials. The points of views of MCT and County Government officials are discussed below.

MCT officials argue that MCT's cash flow problems during the past two fiscal years were caused primarily by the County Government's decision to stop disbursing grant funds to MCT on a quarterly in advance basis. MCT cites two specific negative consequences from this change in County policy:

- MCT no longer earned as much interest on the grant funds it received through the County; and

- MCT had to come up with its own "working capital" (a revolving fund of money that is used to finance a company's operations) to cover its expenses because the advances provided by the County were inadequate to meet all of MCT's cash requirements.

Interviews with MCT officials indicate that the change away from quarterly in advance payments was perceived as a punitive action taken by the County Government against MCT. This perception may be due in part to the fact that the County informed MCT of the change only days before it went into effect, and MCT officials have felt that County staff have not understood the cash requirements of the corporation.

MCT officials maintain that it has been very difficult to develop a "working capital fund". In particular, because MCT's contracts with the County (which represent 90 percent of MCT's total budget) are structured on a "use it or lose it" basis, even if MCT executes cost-saving measures, it cannot keep those funds. Furthermore, MCT argues that it has been unable to build a more permanent working capital fund from its outside revenue, because

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* See comments received from the Department of Finance, page 94.

MCT's fund raising represents a growing but still relatively small percentage of MCT's total budget, and is a multi-year effort that has not yet generated a profit.

Based upon interviews with MCT officials, it is apparent that MCT objects to structuring the master contract on a cost reimbursement basis for several additional reasons. MCT argues that from FY85 through FY88, MCT received funds on a quarterly in advance basis and had structured its operations on the assumption that this disbursement schedule would continue. In addition, MCT officials maintain that having to submit a monthly invoice to the County in order to receive funds places the County in a position of "approving" MCT's specific expenditures on a line-by-line basis, a responsibility that MCT feels should reside with MCT's Board of Directors.

The Executive branch does not dispute MCT's claim that the change in the County's fund disbursement policy caused a decrease in MCT's interest earnings, but believes that MCT overstates the negative impact that this change had, and disagrees with the characterization of the current contractual arrangement as placing the County in a position of line-by-line control over MCT's budget. The Cable Office also believes that other factors contributed to MCT's cash flow difficulties.

In particular, the Cable Office cites the fact that the amount of interest earned by MCT decreased only by $15,730 when the County changed from quarterly to monthly payments in advance in FY89:

	Interest	Type of Advance
FY85	$ 5,828	Quarterly
FY86	$25,038	Quarterly
FY87	$61,584(*)	Quarterly
FY88	$29,396	Quarterly
FY89	$13,666	Monthly

(*) MCT received over $1 million to purchase video equipment and build its central studio in FY87.

Source: MCT Audits.

Executive branch staff acknowledge that the change in the County's fund disbursement policy required MCT, like other contractors, to institute a tighter cash management system. However, the Department of Finance believes that the two-month advance that MCT received this fiscal year should be adequate for a company the size of MCT; the assumption being that MCT can prepare a bill for its services within two weeks of the end of a month, and the County can review the bill and issue a reimbursement check within two weeks of receiving an invoice.

Believing that the County's method of disbursing funds to MCT should not have been a primary cause of cash flow problems, the Cable Office maintains that the following factors likely contributed to MCT's cash flow difficulties during the past two fiscal years:

- MCT's fund raising efforts have apparently cost considerably more than they have produced in earned revenues;

- MCT's invoices to the County in FY89 and FY90 have, at times, been delayed or incomplete; and

- During FY89, expenditures under the two service contracts were less than budgeted, which created a secondary problem with MCT's fixed overhead expenses. (During the budget discussion, the Executive branch had advocated a lower budget estimate, which would have been more in line with the level of service actually used. For more details on this issue, see footnote on page 35.)

Finally, the Executive branch emphasizes that it has taken steps to help MCT meet its cash requirements. First, the County disbursed funds to MCT for the master contract on a monthly in advance basis during FY89, which was seen as a transition between quarterly in advance payments and cost reimbursement. Secondly, MCT was provided with a 16.7 percent advance payment of grant funds this fiscal year, and the master contract was structured with certain fixed costs to assure MCT of a minimum monthly payment.

A third way in which the County Government accommodated MCT's cash requirements is less direct. Specifically, on July 1, 1988, the County provided MCT with an upfront payment of $100,000 that was designated in the Cable Plan for the express purpose of purchasing equipment for a news control room. During FY89, MCT informed the County that, in the absence of a true working capital fund, MCT had to use these funds to meet cash requirements and could not purchase the news control equipment. By not requiring MCT to return these funds at the end of FY89 because the funds had not been used for their designated purpose, the County, in essence, allowed MCT to use this $100,000 as a temporary working capital fund to meet MCT's cash requirements and contingencies.

A complete analysis of MCT's financial management practices was beyond the scope of this report. Many of the Executive branch's points appear sound. At the same time, OLO's interviews with County contract administrators in other departments indicate that the problems voiced by MCT about the County's cash disbursement/advance policy are not unique. Apparently, problems have been similarly voiced by other contractors, and especially other non-profit organizations which are dependent upon the County for a large proportion of their total funding. In particular, it appears that organizations operating without an established working capital funds face similar cash flow difficulties from receiving funds on a reimbursement basis, with only a limited advance.

3. Current status. During the course of OLO's study, the Executive Director of MCT, working in consultation with MCT's auditor, spent a good deal of time determining the best way to manage MCT's cash flow. Certain changes have been instituted, and at a meeting held during the first week of January 1990, the Executive Director of MCT, Cable Office staff, Office of Management and Budget staff, and Council staff discussed MCT's current financial position.

As of early January 1990, MCT's Executive Director reports that MCT does not expect to face either a cash or budget deficit during this fiscal year, and that the news control room equipment will be purchased before July 1, 1990. This statement is based upon a transfer of MCT funds among spending categories this fiscal year, and a willingness of the Cable Office to approve use of a portion of the $100,000 allocated to MCT in FY89 to meet outstanding financial obligations.

G. Issue #5: In exchange for funding, what requirements or conditions, if any, should be placed by the County Government on MCT?

As reviewed in the previous chapter (see page 35), the County Government has never allocated funds to MCT unconditionally. In Cable Plans and contracts, the County has imposed certain requirements and restrictions on MCT's receipt of funding and MCT's expenditures. This section identifies and discusses the specific conditions that have caused disagreement between the County and MCT.

There is no record of any dispute between the County and MCT over the requirement that, in order to receive grant and settlement funds through the County, the MCT Board must adopt an affirmative action plan and MFD procurement procedures, and report the results annually to the County. There also has not been any major disagreement over the provisions in the master contract that give the County the right to monitor and inspect all services called for by the contract, and the right to examine MCT's records relating to work performed under the contract.* However, a review of the record indicates that disagreements between MCT and the Cable Office have occurred over the following County requirements and restrictions:

- The requirement that MCT Board Members file financial and political activity disclosure statements with the County Ethics Commission;
- The restriction that MCT may not use any of the equipment purchased with County grant funds since November 14, 1986 as collateral on a loan from a commercial bank;

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* There was, however, a delay in MCT's compliance with a County request for a copy of MCT's contract with JC Penney. The County's request was made on September 29, 1989, and a copy of the contract was not provided until November 9, 1989.

- The restrictions in the FY90 master contract on the rate at which MCT may spend grant moneys, or exceed certain fixed costs in the contract, without prior approval from the Cable Office staff; and

- The restriction in the FY90 master contract that limits the amount of County allocated grant dollars that can be spent by MCT on fund raising activities, and "local origination" programming other than the news program.

The remaining sections of this chapter discuss specifically how these four conditions have caused disagreements between County and MCT officials.

1. Financial and political activity disclosure statements. As described earlier in this report (see page 39), since FY89, the annual Cable Plan has stipulated that MCT may not receive funding unless all members of the Board of Directors have filed a financial disclosure form with the County's Ethics Commission. This provision is consistent with the financial disclosure requirements contained in MCT's bylaws, as approved by the County Council and County Executive in the FY85 Cable Plan.

In March 1987, the MCT Board of Directors voted to eliminate the financial and political activity disclosure requirement in MCT's bylaws. In accordance with the requirement for local government approval of any bylaw amendments, MCT forwarded a request to the Council and Executive that this change be approved. The position of MCT's Board was that since MCT was established as a private, non-profit corporation, MCT's Board members should not be subject to the County's Ethics law in the same way as if they were County employees. The objection to the financial disclosure requirement was so strongly felt by one MCT Board Member that this individual refused to file the required disclosure statement and subsequently resigned from the MCT Board.

In recommending that the existing financial and political activity disclosure requirements be removed, the MCT Board of Directors stated its own commitment to maintaining an internal process for handling potential conflicts of interest. In particular, the MCT Board proposed a new process that would involve disclosure to MCT's attorney of any cable-related financial interests and any positions that Board members hold in organizations in the County; the disclosure requirements would include the Executive Director of MCT in addition to each MCT Board member. MCT's attorney would then provide the County Attorney's Office with an opinion of counsel certifying that no conflicts of interest exist, or if there were any potential conflicts, the nature of such conflicts.

On November 5, 1987, in a memorandum to the Council, the County Executive recommended approval of MCT's proposed change requiring MCT Board Members to file a limited financial disclosure statement with their attorney rather than a full financial disclosure statement with the County's Ethics Commission. The Executive wrote that, "I believe this proposed revision protects the public interest while at the same time recognizing MCT's independent status."

However, this view was not shared by the Cable Communications Advisory Committee. In a November 20, 1987 letter to the Council, the Chair of the CCAC communicated the advisory committee's opposition to deleting the current requirement for financial and political activity disclosure. Specifically, the CCAC Chair wrote:

> "The CCAC does not favor compromising Ethics Commission regulations for any organizations responsible for expending substantial County funds. Inasmuch as MCT is an organization that annually spends between $1-2 million of County funds, the CCAC believes that MCT should continue to be subject to Ethics Commission regulations."

As of this writing, the Council has not yet acted on MCT's request to amend its bylaws. According to Council staff, this is because the Council decided to address any changes to MCT's bylaws simultaneous with changes proposed to Chapter 8A, Cable Communications. As noted earlier, Bill 26-89, which contains comprehensive revisions to Chapter 8A, was introduced on May 2, 1989, and is scheduled for public hearing in early 1990.

2. Limitations on Use of Equipment as Collateral. As described in the previous chapter, the master contract executed between the County and MCT for the past two years (FY89 and FY90) has included a provision concerning MCT's ability to pledge video equipment as collateral on any loan or other financial instrument. Specifically, Article VIII of the FY90 master contract states that:

> "Video equipment titled to MCT in the County/MCT Video Transfer Agreement of November 25, 1986 may be used by MCT as collateral without County approval; however, any equipment purchased with County funds after the transfer date (November 14, 1986) may be titled to MCT, but not used as collateral on any loan without County approval."*

In addition, Article XIII of the FY90 master contract includes a standard contract provision that all capital purchases (including equipment) made with funds provided under the County's contract with MCT become the property of the County upon termination of the contract.

In June 1989, in an effort to obtain a revolving line of credit from a commercial bank to serve as a working capital fund, MCT requested permission from the County to pledge its video equipment as collateral; MCT's request was denied by the County. The position of MCT officials continues to be that if MCT is to operate as a private, non-profit corporation, then all restrictions regarding the use of MCT's assets should be removed.

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* See page 23 for explanation of the County/MCT Video Transfer Agreement of November 25, 1986.

In a memorandum to OLO dated October 24, 1989, the President of MCT's Board of Directors included the prohibition on pledging equipment as one of MCT's "critical concerns". Specifically, MCT's Board President writes that:

> "Unlike other businesses, the MCT Board cannot pledge a substantial portion of the assets of the company to obtain a loan or establish a bank line of credit without prior County approval. (The older "Tribune" equipment that is free of this restriction has been fully depreciated.) These are financial decisions that are common to all private businesses and must be done at times to meet the vagaries of "cash flow" management or other exigencies."

Requiring that all purchases made under a County contract become the property of the County when the contract ends is a standard provision in all County contracts. The position of the County Government is that all equipment purchased with grant funds provided through the Cable Plan is an investment made with County dollars and must be protected accordingly. If MCT were allowed to pledge equipment as collateral on a loan, and if MCT were to default on the payment of that loan, then the bank would have the right to claim the equipment. This is a risk that the County Government believes is unreasonable to take. Moreover, according to the Cable Office, allowing MCT to pledge the equipment estimated to value $122,562 in 1986 that MCT received under the County/MCT Video Transfer Agreement of November 25, 1986, was seen as a compromise to MCT's position.

3. <u>MCT expenditures that require prior County approval</u>. As reviewed in the previous chapter, MCT's authority to vary actual expenditures from those approved in the Cable Plan and/or contract has changed during the past five years. In certain respects, MCT's authority in the FY90 master contract is greater than in prior years, while in other respects, MCT's authority has been reduced.

In contrast to the early years of MCT's operations (FY85 through FY87), the MCT Board is no longer restricted to following a "staffing plan" approved by the County as part of the annual Cable Plan. The removal of this condition means that the County Council and County Executive no longer approve the specific number of workyears on the MCT staff as part of the Cable Plan. Also, in contrast to earlier years, prior County approval is no longer required either for equipment purchases, or the transfer of funds between spending categories. Under the terms of the FY90 master contract, MCT is only required to inform the Cable Office in advance of the intent to vary expenditures by more than ten percent among spending categories.

However, the FY90 master contract added several new requirements for County approval. Specifically, the FY90 contract states that MCT may not bill the County for more than $160,000 per month or for more than a total of $900,000 for the July 1, 1989-December 31, 1989 period unless approved in advance by the Contract Administrator based on written documentation by MCT of the need. In addition, the FY90 master contract requires MCT to obtain approval from the Contract Administrator to amend the total rate per work day, for which the Contract Administrator may authorize increases to by up to ten percent.

According to Cable Office staff, these requirements were added in response to concerns about MCT's spending record for the past two fiscal years. Cable Office staff maintain that the total master contract allocation for FY90 divided equally among 12 months totals $142,500, so that the $160,000 monthly limit was a reasonable restriction that continues to provide MCT with some flexibility to vary monthly expenditures; and the $900,000 ceiling for the first six months of the contract year represents more than half (53 percent) of the total master contract funding allocation of $1,711,000 for FY90.

These additional conditions on MCT's rate of spending were imposed by the Cable Office with the same rationale as the additional reporting requirements, that is, they were seen as appropriate measures for exercising oversight over the allocation of County grant dollars. However, in the same way as the additional reporting requirements were seen as intrusive, MCT officials perceive the current requirements for seeking prior Cable Office approval for increases in expenditures as inappropriate interference into MCT's business affairs. MCT officials maintain that these requirements infringe upon the Board's authority to make the full range of financial decisions over MCT's budget. Moreover, there is a perception by the MCT Board that these requirements demonstrate lack of trust by the County in the MCT Board's ability to exercise sound financial judgment.

4. <u>Restrictions on use of grant funds.</u> As reviewed in the previous chapter (see page 36), the Cable Plan has always allocated funds to MCT among designated spending categories, and MCT has had some authority to vary actual spending among the categories. In contrast to previous years, however, the FY90 master contract explicitly prohibits the use of grant funds for certain activities. Specifically, Article II of the FY90 master contract executed between the County and MCT provides that:

> "This contract does not include funding for local origination productions, with the exception of the News Program, nor does this contract include funding for MCT staff and operating expenses involved in private fund raising, with the exception of the items listed below:
>
> - Administrative costs involved in supporting fund raising (those personnel who would remain on staff in the absence of fund raising activity).
>
> These fund raising elements are approved in this contract for FY90 only, and any future year's support for fund raising activity will be determined on an annual basis by the County Government."

According to Cable Office staff, the stipulation in the FY90 master contract regarding fund raising was added because the FY90 Cable Plan had not allocated any additional funds for MCT's fund raising efforts. The FY89 Cable Plan had allocated MCT $50,000 which was designated as a one-time, start-up grant for MCT's fund raising efforts. During the discussions with the Council over the FY90 Cable Plan, the Cable Office expressed concern that the salary and operating costs of MCT's fund raising efforts were considerably higher in FY89 than the revenue it produced. Providing support for the overhead costs of fund raising for one additional year was offered as a compromise between the Cable Office and MCT during negotiations over the FY90 master contract.

According to Cable Office staff, the prohibition on use of grant funds for "local origination productions, with exception of the News Program" was added to clarify the general nature of programming and services that the County Government intended to support under the master contract. In particular, according to the Cable Office, with the noted exception of the news program, the cable grant funds allocated under the FY90 master contract are intended to be used to support "public access", which is defined in the master contract as "video programs, and services in support of creation of such programs, where half of the production and technical crews are, on average, made up of volunteers certified by MCT." This is in contrast to supporting programs that are "local origination or professionally produced", which is defined in the master contract as "video programs, and services in support of such programs where, on average, more than half of the production and technical crew are made up of paid MCT staff".

Although MCT officials signed the contract that contained these expenditure restrictions, in interviews with OLO, MCT officials voiced objection to these conditions. MCT's position is that the County Government has urged MCT to seek outside sources of revenue, and that establishing a profitable fund raising program is a multiyear effort. MCT argues that the success of MCT's fund raising efforts should not be judged prematurely, and that the corporation should be allowed to use a portion of the grant funds allocated by the County under the master contract to directly support MCT's fund raising program because, in the long run, MCT's outside revenues will enhance MCT's public access activities. Further, MCT's position is that, in order to attract advertising, raising outside revenue may appropriately include producing programs that are more than 50 percent staffed by MCT professionals.

VII. COMPARATIVE INFORMATION

A. Introduction

During October and November 1989, OLO conducted telephone interviews with providers of public access in 13 jurisdictions outside Montgomery County. These jurisdictions were selected on the basis of their comparability to Montgomery County's demographics, cable system characteristics, and/or their reputation in public access.

This chapter summarizes the comparative information that was collected; Montgomery County data is included on all tables, which are compiled beginning on page 69a.

B. General Characteristics of the Jurisdictions Surveyed

Table 5 (page 69a) lists the general characteristics of the jurisdictions surveyed. The data indicate that eight of the 13 jurisdictions surveyed are similar to Montgomery County in that they have franchise agreements with a single cable operator; three have agreements with two different cable operators; two have agreements with three cable operators; and one (Dade County) has agreements with six different cable operators.

In addition, the data show that eight of the jurisdictions surveyed, like Montgomery County, signed their initial franchise agreements between 1981 and 1983. Of the remainder, three were either reviewed or renegotiated in 1981, while San Diego's franchise agreements were both signed prior to 1974.

The average (mean) population of the 13 jurisdictions surveyed is approximately 686,000. The average number of cable subscribers is 144,462 and the average penetration rate 48.2 percent. Comparatively, Montgomery County's population (710,000) is somewhat higher than the average, while the County's total number of cable subscribers (90,022) and penetration rate (42.8%) are lower than the averages of the jurisdictions surveyed.

The data also show that Montgomery County is above average in terms of the number of PEG channels made available under the franchise agreement. The 13 other jurisdictions surveyed averaged nine PEG channels on reserve with seven in use, while Montgomery County has 13 PEG channels on reserve, of which nine are currently in use, and two more are planned for activation in 1990.

C. General Characteristics of Public Access Providers Surveyed

Table 6 (page 69b) lists the general characteristics of the public access providers surveyed. The data indicate that a non-profit organization (NPO), similar in structure to MCT in Montgomery County, manages public access in 11 of the 13 jurisdictions surveyed. A government agency manages public access in Dade County, and the cable operator manages public access in San Diego.

In seven of the 11 jurisdictions surveyed that have NPOs, the local government officially designated the NPO as the official public access provider. This designation was made either in local law or in the franchise agreement. NPOs that are designated as the official public access provider in the franchise agreement are referred to as "third party beneficiaries" of the franchise agreement. The remaining four NPOs, like MCT, are not officially designated either in law or in the franchise agreement as their jurisdiction's official public access provider.

Seven of the 11 NPOs surveyed are similar to MCT in that they have programming responsibilities that extend beyond traditional public access to educational access, government access, and/or production of a local news program. NPOs in three of the other jurisdictions surveyed (Boston, Hennepin County, and Prince George's County) produce either a daily or weekly news show.

All 11 of the NPOs surveyed, like MCT, are governed by a Board of Directors. The composition and size of the Board vary. The average Board size is 18 voting members, which is three more than the number of voting members on the MCT Board of Directors. The local government selects voting Board members in four of the places surveyed. Five of the jurisdictions surveyed are similar to Montgomery County in that the local government and/or cable operator appoint non-voting members to their NPO's Board of Directors. The remaining two NPOs have no local government representation on their Board of Directors.

Although the responsibilities of the different Boards of Directors vary, the Boards are all described as being responsible for general, financial, and budgetary oversight of the public access function. In addition, the Chief Executives of most NPOs report that "community outreach" and "fund raising" are central to their Board of Directors' roles.

D. Structure of Access Provider's Relationship with Local Government/Cable Operator

Table 7 (page 69e) summarizes information about the structure of the access providers' relationship to the local government and cable operator in each jurisdiction. The data indicate that nine of the 13 jurisdictions surveyed make use of a contract as part of their administration of the public access function. In six places, similar to the current arrangement in Montgomery County, a contract is executed between an NPO and the local government. In two places, a contract is executed between an NPO and the cable operator, and in Tucson, there is a three-way contract executed among the local government, the cable operator, and the NPO.

In five of the jurisdictions surveyed, the NPO that manages the public access function has a contract that is renewed annually. In the four other places that have a contract, the NPO's contract is for a multi-year term that expires at the end of the franchise agreement. In six of the jurisdictions surveyed, similar to Montgomery County, the funding level for the public access provider is subject to an annual appropriations decision by the local government.

The data collected show that in all but one of the 13 jurisdictions surveyed, either the local government itself or a commission created by the local government exercises oversight over public access. Similar in structure to Montgomery County, Dade County and Milwaukee established a Cable Administration or Telecommunications Office that is part of the Executive branch of government, which is charged with oversight of public access as well as with general administration of the franchise agreement; in three additional jurisdictions (Arlington County, San Diego, Tucson), this function is performed directly out of the City/County Manager's office. Of the remaining jurisdictions surveyed, five created a citizen-based commission to oversee all cable-related functions, and in Columbus the Department of Human Resources is responsible for cable oversight.

In terms of reporting information to the local government, the requirements among the 13 jurisdictions surveyed vary, but many places include requirements for both financial and performance data. It appears that NPOs designated as third-party beneficiaries of the franchise agreement have fewer mandatory reporting requirements than those that are not. Although the NPOs in Boston, Chicago, and Hennepin County have no mandatory reporting requirements, certain information is shared with their respective local governments on a voluntary basis.

E. Funding Levels and Disbursement of Cable Revenues

Table 8 (page 69f) and Table 9 (page 69g) compare the FY90 funding levels, and the allocation and disbursement of cable revenues to public access providers in the jurisdictions surveyed. All of the public access providers surveyed are funded largely from revenues generated by the cable operator; the jurisdictions vary, however, as to whether funds are provided directly to the public access provider or provided directly to the local government, which then distributes the funds to the various PEG operators.

The data indicate that the average (mean) cable revenues allocated to public access for FY90 in the 13 jurisdictions surveyed is $686,237. This compares to MCT's allocation in the FY90 Cable Plan of $2,069,000. In addition, the average (mean) budgeted outside revenue for FY90 is $90,482. This compares to MCT's projection of $201,000 in outside revenue for this fiscal year. Although MCT receives a higher level of funding than any of the other access providers surveyed, this observation by itself cannot be used to draw conclusions about the efficiency of MCT's operations because the specific tasks performed by the various providers surveyed vary widely.

In eight of the 13 jurisdictions surveyed, the funding level for the public access provider is fixed by means of a funding "formula" contained in either the franchise agreement or in a multi-year contract. In four other places, similar to the structure established by the Cable Plan in Montgomery County, the local government continues to make an annual decision on the level of funding for public access; in two places, the annual funding decision by the local government is made in conjunction with a funding formula.

The frequency of fund disbursements among the jurisdictions surveyed varies considerably. For example, the public access provider in Chicago receives its total funding for the year in a single payment at the beginning of the fiscal year. The disbursement of operating funds is every four months in advance in Fairfax County, every three months (quarterly) in advance in five jurisdictions (Hennepin County, Milwaukee, Multinomah County, Prince Georges County, and Tucson), bi-monthly in advance in Arlington County, and monthly in advance in Boston. Only three of those surveyed are required (as MCT is required under the terms of the FY90 contract) to submit an invoice of expenses to receive payments (Austin, Columbus, Dade County).

The public access provider is permitted to retain unexpended funds in ten of the 13 places surveyed, although in Arlington County the cable operator may request repayment of any surplus. Similar to the current arrangement in Montgomery County, three of the jurisdictions prohibit the access provider from carrying-over funds that are not encumbered by the last day of the fiscal year.

F. Summary of Comparative Information

The comparative data collected demonstrate that the nature of the public access function and its relationship to local government vary. The data illustrate that there are similarities and differences between the structure of the public access function in Montgomery County and the structure found in other jurisdictions. In particular, the data indicate that, similar to Montgomery County, there are examples of other local governments that:

- Delegate the management of the public access function to a non-profit corporation that was established, like MCT, with its own Board of Directors;

- Make an annual decision on the level of funding allocated to public access; and

- Execute a contract with the public access provider and require that provider to report certain financial and performance data to the local government.

The data collected also illustrate that other public access providers, like MCT, perform functions that go beyond the management of a single, traditional public access channel. There are, for example, other public access providers that are involved with government access and educational access, and several others that also produce a daily or weekly news program.

However, the data also indicate that, in the majority of other jurisdictions surveyed, unlike the structure in Montgomery County:

- The public access provider is designated either in local law or in the franchise agreement as the official access provider;

- The public access provider is allowed to retain control of funds that are allocated but not encumbered during a given fiscal year; and

- Funds are disbursed to the public access provider on some type of advance basis (i.e., not on a cost reimbursement basis).

Table 5

General Characteristics of Jurisdictions Surveyed

			Cable System Characteristics			# of PEG Channels		
JURISDICTION	CABLE OPERATOR(S)	ESTIMATED POPULATION	SUBSCRIBERS	PENETRATION RATE	# OF CHANNELS	RESERVED	IN USE	YEAR FRANCHISE AGREEMENT SIGNED
Arlington County, VA	Arlington Cable Partners	180,000	42,000	52%	54	5	5	1973-Reviewed in 1981
Austin, TX	ATC	466,000	126,000	52%	54	14	8	1963-Current agreement-1981
Boston, MA	Cablevision of Boston	573,000	105,000	44%	104	6	3	1982-Renegotiated in 1985
Chicago, IL	• Prime (Group W) • TCI (Chicago Cable TV)	1,100,000	260,000	25%	52	8	7	1983
Columbus, OH	• Warner • ATC • Coaxial Communications	966,000	213,000	52%	35	3	3	1979
Dade County, FL	• TCI o Storer • Adelphia o Colony • Rifkin-Naragansett • Cable-Satellite	1,769,000	300,000	40%	36 or 54	Available upon request	3	1971-Reviewed in 1981
Fairfax County, VA	Media General	729,000	175,000	60+%	120	16	16	1982
Hennepin County, MN	King Cable Company	300,000	45,000	44%	58	17	12	1981
Milwaukee, WI	Warner-Amex Cable	650,000	87,000	35%	70	8	5	1982
Montgomery County, MD	Montgomery Cablevision Ltd. Partnership	710,000	90,022	42.8%	58	13	9	1983-Renegotiated in 1986
Multnomah County, OR	Rogers Cable Television	125,000	39,000	55%	58	8	8	1983
Pr. George's Co., MD	• Multivision, Inc. • Metrovision, Inc.	681,000	130,000	53%	72	8	7	1982
San Diego, CA	• Cox • Southwestern • Boulder Ridge	1,015,000	271,000	70%	37	3	2	• Cox in 1969 • Southwestern in 1974 • Boulder Ridge in 1977
Tucson, AZ	Cook Cablevision	358,000	35,000	45%	60	15	10	1982

1 Penetration Rate is the ratio of the number of subscribers to the total number of households passed by the cable system.
2 Reserved PEG Channels is the total number of channels designated under the franchise agreement by public, educational, or government access use.
3 Montgomery Cablevision Limited Partnership is an affiliate of Hauser Communications, Inc.

Source: Phone interviews with public access providers and oversight entities, conducted by OLO during October/November 1989.

Table 6

General Characteristics of Public Access Providers

JURISDICTION	NAME OF ORGANIZATION	TYPE[1]	LAW[2]	F.A.[3]	DATE ESTABLISHED	SCOPE OF PROGRAMMING	GOVERNING BODY/ COMPOSITION	FUNCTIONS[4]
Arlington County, VA	Arlington County Cable Access Corporation	NPO	No	No	1982	• Public access.	Board of Directors (15 voting members) • 11 voted by membership. • 3 appointed by county. • 1 appointed by cable operator.	• General oversight. • Approval of budget. • Fund raising. • Community outreach.
Austin, TX	Austin Community Television	NPO	No	No	1973	• Public access.	Board of Directors (up to 24 voting members) • 6 selected by subscribers. • Up to 18 appointed by those 6.	• Policy oversight. • Appoints/oversees Executive Director. • Represents organization to community. • Conducts fund raising.
Boston, MA	Boston Community Access and Programming Foundation	NPO	No	No	1983	• Public access, including daily news program. • Services to government agencies.	Board of Directors (18 voting members) • 15 selected by nominating committee. • 3 by membership.	• Develops mission statement. • Financial oversight. • Policy development. • Long-term planning and development. • Committee structure.
Chicago, IL	Chicago Access Corporation (CAC)	NPO	Yes	Yes	1983	• Public access. • Educational access.	Board of Directors (51 voting members) • 15 by membership. • 36 by nominating committee. • 7 committees.	• Oversight of CAC. • Approves budget. • Long-term/short-term planning. • Raises revenue. • Policy development.
Columbus, OH	Columbus Community Cable Access, Inc.	NPO	No	No	1980	• Public access.	Board of Directors (15 voting members) • Appointed by current members. (2 non-voting members) • 1 City government. • 1 Producer's advisory group.	• Policy oversight. • Fund raising.
Dade County, FL	Dade County School Board	G	Yes	Yes	1983	• Public access. • Educational access.	• Dade County School Board.	• General oversight.

JURISDICTION	NAME OF ORGANIZATION	TYPE	LAW	F.A.	DATE ESTABLISHED	SCOPE OF PROGRAMMING	GOVERNING BODY/ COMPOSITION	FUNCTIONS
Fairfax County, VA	Fairfax Cable Access Corporation	NPO	No	Yes	1982	• Public access.	Board of Directors (9 voting members) • 6 selected by membership. • 3 by the above 6.	• Establishing mission statement. • Sets and reviews policy. • Fiscal review and approval. • Hires/fires General Mgr. • Long-range planning. • Community outreach. • Fund raising.
Hennepin County, MN	Northwest Community Television Corporation	NPO	No	No	1981	• Public access, including daily news program.	Board of Directors (14 voting members) • 5 at large: 2 elected by producers; 3 selected by Cable Comm. • 9 appointed by cities (1 each)	• Policy oversight. • Review/approval of the budget.
Milwaukee, WI	Milwaukee Access Telecommunications Authority (MATA)	NPO	Yes	Yes	1984	• Public access.	Board of Directors (13 voting members) • 9 elected by membership. • 4 selected by those 9. • 2 ex-officio seats are reserved for Cable Office and Cable Operator.	• Sets policy. • Fiduciary management. • Fund raising. • Hire/fire Executive Director. • Long-range planning.
Montgomery County, MD	**Montgomery Community Television, Inc. (MCT)**	**NPO**	**No**	**No**	**1984**	• **Public access.** • **Other access programming, including daily news program.**[5] • **Support for government access.**	**Board of Directors (15 voting members)** • **12 selected by designated community groups.** • **3 at-large members selected by above.** • **8 non-voting members representing CC, CE, MCPS, Montgomery College, Cable Operator, City of Takoma Park, Rockville, Municipal League.**	• **Oversight & governance.** • **Hires/fires Executive Director.** • **Community outreach.** • **Fund raising.**
Multnomah County, OR	Multnomah Cable Access Corporation	NPO	No	Yes	1983	• Public access. • Education access in conjunction with public schools. • Government cablecasting.	Board of Directors (7 voting members) • Selected by Cable Regulation Commission. • 2 ex-officio members representing the cable operator and community college.	• Management of corporation. • Hires/fires General Manager. • Sets organizational policies.

JURISDICTION	NAME OF ORGANIZATION	TYPE	LAW	F.A.	DATE ESTABLISHED	SCOPE OF PROGRAMMING	GOVERNING BODY/ COMPOSITION	FUNCTIONS
Prince George's County, MD	Prince George's Community Television, Inc. (PGCT)	NPO	No	No	1982	• Public access, including weekly news program. • Government access.	Board of Directors (17 voting members) • 9 selected by Council members. • 2 by each cable company. • 2 by Cable Commission. • 2 by educational groups. • Exec. Director of PGCT. • 1 ex-officio member representing Executive Director of the Cable Commission.	• General policy.
San Diego, CA	Cable Operators	CO	No	Yes	n/a	• Public, education, and government access.	• Cable Operators.	• Administration of cable functions.
Tucson, AZ	Tucson Community Cable Corporation, Inc.	NPO	Yes	Yes	1983	• Public access.	Board of Directors (15 voting members) • Elected by membership. • 2 ex-officio members representing City Manager and Cable Operator.	• General policy. • Community outreach. • Fund raising.

[1] Type codes:
NPO - Non-profit organization
G - Government
CO - Cable operator

[2] The "Law" column indicates whether the access provider is designated by local law as the official public access provider.
[3] The "F.A." column indicates whether the access provider is designated in the franchise agreement as the official public access provider.
[4] Functions descriptions are summaries of responses by access providers during telephone interviews.
[5] See definition of Channel 21, page 6.

Source: Phone interviews with public access providers and oversight entities, conducted by OLO during October/November 1989.

Table 7

Structure of Access Providers' Relationships To Local Government/Cable Operators

JURISDICTION	LOCAL GOVERNMENT ENTITY CHARGED WITH OVERSIGHT OF PUBLIC ACCESS	CONTRACTUAL ARRANGEMENT	REPORTING REQUIREMENTS[1]
Arlington Co., VA	County Manager's Office	1-year contract with the County.	• Annual reports containing budget, programming, training, funding, and membership data.
Austin, TX	Municipal Cable Commission	1-year contract with city, with option for 4 renewals.	• 2-mo. financial report. • 6-mo. activities report. • Annual independent audit.
Boston, MA	None designated, although cable office oversees cable functions.	Contract with cable operator for duration of franchise.	• None, although Board of Directors has undertaken internal 5-yr. Evaluation Program.
Chicago, IL	City-appointed Cable Commission.	None—Cable operator's obligations to public access provider stipulated by franchise agreement.	• Voluntary, as follows: - Quarterly financial report. - Operating reports. - Newsletter and minutes. - Monthly appearances by Executive Director at Cable Commission meetings.
Columbus, OH	City Department of Human Resources	1-year contract with City; option for renewal.	• Monthly financial invoice; • Annual equipment and facilities program rpts.
Dade County, FL	Cable Administration Office	1 year Intergovernmental Cooperation Agreement between County and School Board; option for renewal.	• Quarterly report on equipment and activities.
Fairfax County, VA	Board of Supervisors	Contract with cable operator for duration of franchise.	None.
Hennepin County, MN	Regional Cable Commission	None—subject to annual appropriations by the Commission.	• Voluntary, as follows: - Executive Director reports to Commission 4 times a year on programming, breakdowns and maintenance, and video highlights.
Milwaukee, WI	City Telecommunications Office	None—obligations of cable office and city are stipulated in the franchise agreement and in ordinance.	• Quarterly financial reports to city. • Annual audit and report to city.
Montgomery Co. MD	County Cable Office	Three 1-year contracts with County with options for renewal: • 1 master contract with County govnt. • 1 service contract with Office of Information; and • 1 service contract with County Council.	• Annual independent audit and equipment inventory. • Monthly report on programming, production, training, attendance and workshops. • Quarterly reports on revenues, expenditures, and staffing • Monthly invoice of expenditures.
Multinomah Co. OR	Regional Cable Regulatory Commission	• Contract with Commission for duration of franchise. • Logistical agreement with cable operator for duration of franchise.	• Annual budget and work program. • Quarterly operations reports • Annual independent audit.
Prince George's County, MD	County Cable Commission	• 1-year contract with County, with option for renewal.	• Annual activities report. • Annual independent audit. • Quarterly training and programming report. • Quarterly financial report.
San Diego, CA	City Manager's Office	Cable operator's obligations stipulated by franchise agreement.	None.
Tucson, AZ	City Manager's Office	Three-way contract between city, cable operator, and TCCC for duration of franchise agreement; contract may be terminated by 2 out of 3 parties.	• Annual report to City Council. • Independent audit to Council. • Report on thefts to City Manager's office.

[1] Reports listed in this column are mandatory unless otherwise indicated.

Source: Phone interviews with public access providers and oversight entities, conducted by OLO during October/November 1989.

Table 8

FY 1990 Funding for Public Access Providers

JURISDICTION	PUBLIC ACCESS PROVIDER	CABLE REVENUE	OTHER REVENUE	TOTAL
Arlington County, VA	Arlington County Cable Access Corporation	$ 151,700	$ 68,300	$ 220,000
Austin, TX	Austin Community Television	461,000	95,000	556,000
Boston, MA	Boston Community Access & Programming Foundation	687,200	97,500	784,700
Chicago, IL	Chicago Access Corporation	1,200,000	100,000	1,300,000
Columbus, OH	Columbus Community Cable Access	316,000	60,000	376,000
Dade County, FL	Dade County School Board	762,000	Not Applicable	762,000
Fairfax County, VA	Fairfax Cable Access Corporation	833,000	66,500	899,500
Hennepin County, MN	Northwest Community Television Corporation	1,250,000	-0-	1,250,000
Milwaukee, WI	Milwaukee Access Telecommunications Auth.	450,000	125,000	575,000
Montgomery County, MD	**Montgomery Community Television**	**2,069,000**	**201,000**	**2,270,000**
Multinomah County, OR	Multinomah Cable Access Corporation	703,939	-0-	703,939
Prince George's County, MD	Prince George's Community Television	541,000	363,000	904,000
San Diego, CA	Cable Operators	Not Available	Not Available	Not Available
Tucson, AZ	Tucson Community Cable Corporation	879,000	20,000	899,000

Source: Phone interviews with public access providers and oversight entities, conducted by OLO during October/November 1989.

Table 9

Appropriations and Disbursements for Public Access Providers

JURISDICTION	PUBLIC ACCESS PROVIDER	FUNDS DISBURSED BY	FUNDING LEVELS FIXED BY FORMULA[1]	ANNUAL LOCAL GOVT. ACTION ON FUNDING	FUNDING FORMULA	FREQUENCY OF DISBURSEMENTS	CARRYOVER PERMITTED?
Arlington County, VA	Arlington County Cable Access Corporation	County Government	Yes[2]	No	• $110,000 + CPI base payment (1% gross revenues in FY95). • $25,000 + CPI matching grant.	• Bi-Monthly in advance. • Matching grant in lump-sum in third month of fiscal year.	Yes-although operator may request abatement of surplus.
Austin, TX	Austin Community Television	City Cable Commission	No	Yes	None.	• Monthly reimbursement of expenses, with a 20% advance payment.	No
Boston, MA	Boston Community Access and Programming Foundation	Cable Operator	Yes	No	• $600,000 + CPI adjustment. • $10,000 for maintenance costs. • $40,000 for rent.	Monthly in advance.	Yes
Chicago, IL	Chicago Access Corporation	Cable Operators	Yes	No	• 1% gross revenues, not to exceed $1,000,000. • $1,000,000 equipment and facilities fund.	• Gross revenues annually in advance. • Equipment and facilities fund according to monthly reimbursement of expenses.	Gross revenues-yes. Equipment and facilities fund-no.
Columbus, OH	Columbus Community Cable Access	City Government	No	Yes	None.	• Monthly reimbursement of expenses, with 2-months salaries & 1-month operating expenses advance payment.	No
Dade County, FL	Dade County School Board	County Government	No	Yes	None.	• Quarterly reimbursement of expenses, with 25% advance payment.	No
Fairfax County, VA	Fairfax Cable Access Corporation	Cable Operator	Yes	No	1% gross revenues	• Every 4 months in advance.	Yes
Hennepin County, MN	Northwest Community Television Corporation	Cable Commission	Yes	Yes	• 5% annual gross revenues. • $.50 per subscriber payment ~~and~~ 3% annual adjustment.	• Gross revenues quarterly in advance. • Per subscriber payment-monthly in advance.	Yes
Milwaukee, WI	Milwaukee Access Telecommunications Authority	City Government	Yes	No	• $450,000 + 5% CPI adjustment. • $1,647,000 capital grant maintained in separate account.	• Quarterly in advance.	Yes

JURISDICTION	PUBLIC ACCESS PROVIDER	FUNDS DISBURSED BY	FUNDING LEVELS FIXED BY FORMULA[1]	ANNUAL LOCAL GOVT. ACTION ON FUNDING	FUNDING FORMULA	FREQUENCY OF DISBURSEMENTS	CARRYOVER PERMITTED?
Montgomery County, MD	**Montgomery Community Television**	**County Government**	**No**	**Yes**	**None.**	**• Monthly reimbursement of expenses, with a 16.7% advance payment.**	**No**
Multnomah County, OR	Multnomah Cable Access Television Corporation	Regional Cable Commission	Yes	No	• 3% annual gross revenues. • Grant equivalent to 54% annual budget.	• Quarterly in advance.	Yes
Prince George's County, MD	Prince George's Community Television	Cable Operators	No	Yes	None	• Metrovision annually in advance. • Multivision quarterly in advance	Yes
San Diego, CA	Cable Operators	Cable Operators	No	No	None	Not applicable.	Not applicable.
Tuscon, AZ	Tuscon Community Cable Corporation	• 80% from cable operator. • 20% from City Govt.	Yes	Yes	• $350,000 + 5% CPI adjustment. • Matching and incentive grants not to exceed $256,000.	<u>From Cable Operator:</u> • Operating and matching grants quarterly in advance. • Incentive grant monthly in advance. • Remodeling grant annually in advance. <u>From Local Government</u> • Supplemental appropriation quarterly in advance.	Yes

1 "Yes" means that a funding formula has been established in the franchise agreement or in a multi-year contract.
2 In Arlington County, VA, the franchise agreement is called the "Certificate of Public Convenience and Necessity".

Source: Phone interviews with public access providers and oversight entries, conducted by OLO during October/November 1989.

VIII. RECOMMENDATIONS

The previous chapters of this report traced the history of MCT's development, described the evolution of MCT's relationship to the County Government, identified the current areas of disagreement between MCT and County officials, and reviewed comparative data obtained from 13 jurisdictions outside of Montgomery County. This final chapter offers OLO's recommendations regarding the structure of MCT's future relationship to the County Government.

OLO's recommendations are based upon many hours of consultation with representatives from the Executive branch and MCT. As a package, OLO's recommendations are offered as a set of reasonable compromises between positions expounded by those interviewed. It is OLO's perception that Executive branch staff and MCT officials are eager to resolve their current differences of opinion in order to establish a more productive working relationship.

OLO's recommendations are based upon the following assumptions:

- The current franchise agreement between the County and Montgomery Cablevision Limited Partnership remains unchanged;

- The County Government continues to delegate to a non-profit corporation the responsibility of managing two (out of a total of 13) access channels allocated to the County under Section 30(B) of the franchise agreement;

- The County Government continues to designate Montgomery Community Television, Inc. as the non-profit corporation to manage these two channels; and

- The County Government continues to designate MCT as a grantee receiving funding on a non-competitive basis pursuant to Code Section 11B-42, <u>Cooperative purchasing, public entity contracting and grants.</u>

In addition, although a complete analysis of MCT's financial management during the past five years was beyond the scope of this report, OLO's recommendations are predicated on a recent exchange of information between MCT and Cable Office staff that indicates MCT expects to close this fiscal year (FY90) in a sound financial position, and will be able to purchase the equipment for its news control room before July 1, 1990.*

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* As discussed earlier in this report (see page 59), although funds for purchasing the news control room equipment were provided to MCT in FY89, the equipment has not yet been purchased because MCT needed to use these funds to meet MCT's cash requirements.

Recommendation A: <u>Funding of MCT should continue to be subject to the annual Cable Communications Plan and annual appropriations action.</u>

MCT's funding should continue to be subject to the annual Cable Communications Plan proposed by the Executive and approved by the Council. As described earlier in this report, the Cable Plan is the current process established by law for allocating grant and settlement funds made available to the County Government under the franchise agreement.* MCT's funding is then formally appropriated through the budget process by Council resolution.

MCT officials maintain that, to minimize any perception that the County Government is in a position to influence the content of MCT's programs, it would be preferable for grant funds (especially funds for MCT's news program) to flow directly to MCT from the franchisee, rather than through the County treasury. In a memorandum of October 24, 1989, the President of MCT suggests to OLO that this would "insulate the news program from any real or perceived influence over content by removing it from the annual appropriations process."

As long as MCT receives funds that are allocated by the County Council and County Executive, it is reasonable to recognize that the potential exists for an elected official to make a funding decision based upon his/her personal views about a particular MCT programming decision. However, recognizing that this potential exists does not imply that elected officials should be removed from making decisions that affect MCT's funding.

One of the primary responsibilities of the County Executive and County Council is to make funding decisions about how to spend County resources. Many of the decisions made by the Council and Executive are sensitive in nature and involve subjective judgments. However, the County Government can appropriately make decisions about MCT's overall funding level without infringing upon MCT's ability to make independent programmatic content and scheduling decisions. The comparative data reviewed in Chapter VII also indicate that it is not unusual for a local government to make an annual decision about the level of funding for public access.

Continuing to subject MCT's funding to the annual Cable Plan and appropriations process is consistent with the Report of the Community Access Task Force which recommended that MCT's funding be subject to an annual allocation decision made by the County Executive and County Council. In addition, the annual Cable Plan process is consistent with the current franchise agreement under which the cable operator provides grant and settlement funds to the County Government, which then is authorized to allocate these funds among the various PEG users.

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* As noted earlier in this report, Bill 26-89, Cable Communications-General Revisions, proposes to incorporate the allocation of cable grant and settlement funds into the annual operating budget and eliminate the Cable Plan as a separate process. (See page 30.)

If, as it is recommended, MCT's funding continues to be subject to an annual appropriations process, steps can be taken to minimize any real or perceived local government influence over MCT's decisions related to programming content and scheduling. For example, as the following OLO recommendations suggest: the County and MCT can enter into a multi-year, fixed price contract, the disbursement of funds does not have to be directly tied to the submission of a detailed invoice; funds can continue to be allocated to MCT in general spending categories; and the master contract executed between the County and MCT can be written without any detailed requirements that MCT produce a particular program.

Recommendation B: <u>Chapter 8A, Cable Communications should be amended to specify the essential characteristics of all PEG channel operators that are not public agencies; and the current provisions that require Council and Executive approval of amendments to MCT's bylaws and articles of incorporation should be eliminated.</u>

The appropriate place for the County Government to establish its policy regarding characteristics of PEG channel operators is in law or regulation, and not in the bylaws and articles of incorporation of a particular non-profit corporation. Therefore, Chapter 8A, <u>Cable Communications</u> should be amended to specify the essential characteristics that the County Government requires of all PEG channel operators that are not public agencies.

Depending upon what the County Executive and County Council decide are essential characteristics, Chapter 8A could, for example, specify that any non-profit corporation allocated a PEG channel must abide by the requirement to:

- Develop an MFD procurement plan, consistent with County goals;
- Adopt an affirmative action policy, consistent with County goals;
- Provide the County Government with certain financial information (e.g., an annual audit);
- Follow certain financial and political activity disclosure procedures;
- Conform with certain characteristics related to the governing structure (e.g., that the Board of Directors be community-based); and
- Abide by the County Government's policy regarding commercial use of PEG channels (see Other Recommendations, page 83).

(Note: Bill 26-89, introduced May 2, 1989, and pending Council hearing and action, already proposes to include a number of these items in Chapter 8A.)

Once the County Government's policy regarding essential characteristics of PEG channel operators is established by County law, then the current requirement that the County Council and County Executive approve changes to MCT's bylaws and articles should be eliminated.* MCT's Board of Directors would then be free to amend MCT's bylaws and articles of incorporation without the concurrence of the County Government. However, if MCT's bylaws or articles were changed such that MCT no longer met the essential characteristics outlined in Chapter 8A, then MCT would no longer be eligible to be allocated the use of a PEG channel(s).

Recommendation C: The County's master contract with MCT should be structured as a three-year fixed price contract.

Beginning with FY91, the County Government should negotiate a three-year fixed price contract with MCT for services currently performed under the County's master contract with MCT. This means that the master contract negotiated between the County and MCT should define a package of services to be performed by MCT during a three-year period (July 1, 1990 through June 30, 1993) in exchange for a price (i.e., total grant allocation) that is fixed for each of the three fiscal years, subject each year to the availability of funding approved in the annual Cable Plan.

A three-year fixed price contract between the County Government and MCT would differ from the FY90 master contract, which is structured as a cost reimbursement contract (under which MCT is reimbursed for costs associated with the performance of contract requirements), and is a one-year contract, that may be renewed. It is important to recognize, however, that entering into a multi-year fixed price contract with MCT does not imply that the County Government has given up any authority to oversee MCT's performance, or the right to be kept fully informed about how MCT spends the grant funds allocated.

A fixed price contract is described in the County's Procurement Regulations as, "the preferred contract method in the County" and defined as follows:

> "A fixed price contract is a contract which defines the goods or services to be delivered in exchange for a fixed and defined price. All costs involved have been firmly established, in writing, but may be subject to certain adjustments, objectively defined. Such adjustments may include escalator clauses, incentive clauses, and other adjustment mechanisms."

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* It should be noted that this recommendation to eliminate the current bylaw provision requiring local government approval of bylaw amendments is not being made on the basis of MCT's argument that it, "may be contrary to Maryland corporation law". (See page 50.)

As described in Chapter V of this report, the FY90 master contract directs MCT to provide the following major services:

- Manage two access channels;
- Produce a daily news program;
- Train community producers and technicians;
- Promote public access programming;
- Maintain a central access studio, field production equipment, and editing equipment for use by community producers and technicians;
- Maintain and repair video equipment;
- Provide technical advice and repair equipment upon request to the municipalities;
- Provide character-generator services on MCT's channels and the municipal channels;
- Provide playback services for MCT's channels and for the City of Rockville channel; and
- Support special needs groups in training, program production, and program presentation.

The nature of these services are such that expected services and performance measures can be defined (e.g., number of citizens trained, hours of programming produced), and a fixed price can reasonably be attached to the package of services for the term of a contract. The feasibility of establishing a reasonable fixed price is realistic considering that there have been five years of experience from which to estimate actual costs.

Once a fixed price is attached, then the detailed decisions regarding how to manage resources during the term of the contract in order to perform the services outlined in the contract can and should be delegated to MCT's Executive Director, acting under the overall guidance of MCT's Board of Directors. As outlined in Recommendation J, the County should continue to allocate funds to MCT in the Cable Plan according to broad spending categories, and the MCT Board should continue to have the authority to transfer resources between spending categories during the fiscal year. This overall structure is consistent with the Report of the Community Access Task Force, which explicitly recommended that the County and MCT enter into a multi-year contract, and that:

> "For the governance of Montgomery Community Television, Inc., the Task Force recommends a strong staff leadership role with day-to-day operational responsibility resting in an executive director and top management team, and a Board of Directors that exercises general oversight and acts in collaboration with the staff. . . . Funding of the Corporation will be subject to the annual Cable Communications Plan proposed by the Executive and approved by the Council.*

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* Report of the Community Access Task Force, March 1, 1984, pages iv-vi.

MCT's master contract activities also appear to meet the criteria established in the Procurement Regulations for authorizing a multi-year contract. Specifically, the County's Procurement Regulations state that:

> "Multi-year contracts may be authorized by the Contract Review Committee when it is appropriate to obtain uninterrupted services extending over more than one year, when the performance of services involves high start-up costs, when a continuous source of supply over a multi-year period is required, or when a change-over of services involves high phase-in/phase out-costs during a transition period."

The funding for the future years of a multi-year contract with MCT would, consistent with the County Charter, continue to be subject to the annual appropriations action of the County Council. However, the designation of specific dollar amounts in the contract for future years is close to an assurance of future funding, the general understanding in a multi-year contract being that something unusual would have to occur for the County to decide not to allocate the level of funds outlined in the contract. Finally, according to MCT officials, a three-year fixed price contract will help MCT accomplish some longer-range financial planning.

Recommendation D: <u>The master contract executed between the County and MCT should include an incentive clause.</u>

In order to offer MCT greater incentive to manage its resources efficiently, the master contract executed between the County and MCT should provide an alternative to the current "use it or lose it" funding practice. Specifically, if during the fiscal year, MCT is able to perform the services outlined in the master contract for a price that is lower than the price fixed in the contract for that year, then the contract should authorize MCT to place the remaining portion of that year's grant in a fund designated for a specific purpose (or purposes) that is agreed upon in the contract, such as an equipment replacement fund or a working capital fund.

As described in Chapter V of this report, MCT's current funding through the Cable Plan is on a "use it or lose it" basis, a structure that provides little incentive for MCT to provide services for anything less than the total grant allocation. By explicitly providing that MCT may use any funds "saved" for a purpose specified in the contract, the master contract could establish a clear incentive for MCT to figure out ways to perform contractually required services for the least cost. In addition, the comparative data reviewed in Chapter VII indicate that a majority of the other jurisdictions surveyed allow the public access provider to retain control of funds not encumbered during the fiscal year in which they are allocated.

Recommendation E: <u>The County Government should conduct a performance evaluation of MCT's operations in the second year of the three-year master contract</u>.

The County Government should evaluate MCT's performance on a regularly scheduled basis according to criteria that are established in advance. Such an evaluation would be consistent with the Report of the Community Access Task Force, which specifically recommended that the County Government and MCT sign a multi-year contract, at the end of which the County would evaluate MCT's efforts and determine whether or not to extend the County's contract for another multi-year period.

The performance evaluation of MCT's operations should be conducted in the second year of a three-year master contract executed between MCT and the County. Scheduling the evaluation at that time would provide MCT with the opportunity to improve upon any problems identified by the evaluation prior to the expiration of the master contract. Specifically, this means that if a three-year master contract is entered into for the time period FY91 through FY93, then the performance evaluation of MCT would occur during FY92, which would allow time for MCT to make any necessary changes prior to any decisions made about entering into another multi-year contract beginning in FY94.

It is recommended that the first formal performance evaluation of MCT's operations be designed before the beginning of FY91. The purpose of designing the performance evaluation during the coming six months would be to establish the scope of the evaluation and to identify the specific performance measures that will be used. Designing the evaluation upfront will also enable MCT to begin collecting any additional data that will be needed. As a follow-up to this study, the Council could direct OLO staff to assist with the design of this performance evaluation.

Recommendation F: <u>MCT should provide the County Government with regular and complete reports of how grant monies allocated by the County to MCT are expended</u>.

The master contract executed between MCT and the County Government should specify the frequency and substance of the information that MCT is required to report to the Cable Office. Although the specific format and detail of the data provided should be negotiated between MCT and Cable Office staff, <u>Table 10</u> (page 76a) contains a list of recommended reports and the recommended frequency of their submission to the County Government. This recommended list of reporting requirements assumes that the contract with MCT is structured as a fixed-price contract (as opposed to a cost reimbursement contract), and that disbursement of MCT's funds is not linked to the submission of an invoice of actual expenditures. (See Recommendations C and H.)

It is entirely appropriate for the County Government to request that MCT provide data that: informs how grant money has been spent; enables the County to evaluate how well MCT is achieving its major goals and objectives as established in the Cable Plan and the contracts; and helps the County judge MCT's requests for future funding. It is also appropriate that the contract

Table 10

Recommended Reporting Requirements to Include in Master Contract

DESCRIPTION OF REPORT	RECOMMENDED FREQUENCY OF SUBMISSION	CURRENT FREQUENCY OF SUBMISSION
Independent audit.	Annual	Annual
Affirmative action report.	Annual	Annual
MFD procurement report.	Annual	Annual
Updated equipment inventory.	Annual	Annual
Financial report of revenues and expenditures (by month) by spending categories (personnel, operating, capital).	Quarterly	Monthly
Financial statement of expenditures by functional spending categories: public access, other community programming, fund raising.	Quarterly	Monthly
Projection of monthly revenues and expenses for the remainder of the fiscal year; this report will include data on both an accrual and cash basis.	Quarterly	Quarterly
Staffing chart showing filled and unfilled positions and workyears.	Quarterly	Quarterly
Performance data:		
• Descriptive highlights of key activities.	Quarterly	Monthly
• Hours of programming by type.	Quarterly	Monthly
• Number of certified producers/technicians, and number of people on class waiting lists.	Quarterly	Monthly
• Measures of facilities usage.	Quarterly	Monthly
• Measures of equipment use.	Quarterly	Monthly
• Measure of equipment repairs for municipalities.	Quarterly	Quarterly
All special reports.	As issued	As issued
All notices and agendas of MCT Board meetings.	As issued	As issued
MCT's channel program schedules provided to the public.	As issued	Not required

executed between MCT and the County Government include a provision that MCT's failure to provide reports on a timely basis would constitute a material breach of contract.

The comparative data in Chapter VII indicate that it is not unusual for non-profit access organizations to provide the local government with financial summaries of receipts and expenditures. In six of the 13 jurisdictions surveyed, financial reporting by the public access provider is mandatory.

In negotiating the details of what information is to be provided to the County Government, it would be constructive to minimize the additional MCT staff effort required to comply with the County's reporting requirements. Wherever feasible, the information required by the County should overlap with data that MCT's management is already collecting, and the data that is required to be collected for MCT's scheduled performance evaluation. (See Recommendation E.)

As noted on Table 10, MCT should continue its current practice of providing the County Government with a copy of MCT's annual independent audit of revenues and expenditures for the prior fiscal year. The County should also receive a copy of the management letter that accompanies the independent audit statement, and both the management letter and audit should continue to be sent to the County's Department of Finance, Audit Section for review and comment. MCT and County officials should meet annually to review the findings of the audit and discuss how to address any problems identified. In addition, the Audit Section of the County's Department of Finance should periodically conduct an independent audit of MCT, perhaps in conjunction with MCT's scheduled performance evaluation and/or concurrent with MCT's own independent audit.

Recommendation G: **The master contract executed between the County Government and MCT should not contain any requirement that MCT produce a specific program.**

The FY90 master contract executed between the County Government and MCT states that, "...the County recognizes the independence of MCT with regard to all programming decisions and scheduling on the channels that it manages". To be consistent with this policy, the master contract executed between the County and MCT should not contain any requirement that MCT produce a specific program.

Based upon the general principle that individual programming decisions should be within the purview of the MCT Board of Directors, it is therefore recommended that the current requirement regarding the length and frequency of a news program not be included in future contracts between MCT and the County. Specifically, the FY90 master contract requires that MCT:

> "Produce a daily news program of a duration of at least one-half hour and cablecast Monday-Friday (except if an MCT holiday falls on Monday-Friday), focused on Montgomery County news. At least 250 shows of this type will be produced."

By replacing this detailed requirement with a more general contractual requirement such as, "MCT shall produce community-oriented programming that includes coverage of local news and events," the specific decisions regarding the nature of a news program would then appropriately be delegated to MCT's Board of Directors.

As reviewed in Chapter V, under the County's original franchise agreement signed in 1983, the cable operator (Tribune-United) had agreed to produce a daily news program as part of its local origination programming efforts. A local news program was never produced by Tribune-United, and the revised franchise agreement, effective as of November 14, 1986, no longer requires the cable operator (Cable TV Montgomery) to produce any local origination programming, including a news program. It was shortly after the transfer of the franchise that the County Government added the task of producing a news program to the list of MCT's specific responsibilities, and increased MCT's funding commensurately. The requirement in the FY90 master contract that MCT produce a daily 30-minute news program is the only current contractual requirement that places the County Government in a position that could be perceived as being involved with MCT's programming decisions.

It is important to note that replacing the specific contractual requirement that MCT produce a daily 30-minute news program with a more general requirement such as, that MCT produce "community-oriented programming that includes coverage of local news and events", does not imply that MCT's performance in this area cannot be evaluated. The master contract can continue to require reports that explain what types of community-oriented programs MCT is producing to fulfill this contractual requirement, and the costs associated with producing these programs can certainly be evaluated as part of the periodic evaluation of MCT's operations.

Recommendation H: **For services performed under the master contract, the County should disburse grant funds allocated to MCT according to a schedule that balances MCT's cash flow needs with the County Government's policy of prudent fiscal control on advance payments to contractors.**

For services provided under the master contract, the County should disburse funds to MCT on the first of every month with the total disbursement for the year equalling the total grant allocation approved in the Cable Plan. Each monthly payment should approximate the total grant allocation for the year divided by twelve, but with adjustments among the twelve months that enable MCT to meet identifiable cash requirements. At the time of MCT's master contract renewal, the need to continue this procedure should be reassessed.

A sample of such a disbursement schedule, as proposed by MCT staff, is included for illustrative purposes as Table 11 (page 79a). MCT's Executive Director has informed OLO that such a disbursement schedule would accommodate MCT's present cash requirements. In particular, monthly payments have been adjusted for months in which there are three paydays, the FICA payments associated with these paydays, MCT's property tax payments, and MCT's lump-sum insurance premiums.

This recommended disbursement schedule is offered as a compromise between MCT's desire to return to the disbursement of funds on a quarterly in advance basis, and the County's FY90 practice of disbursing funds to MCT on a cost reimbursement basis. A modified monthly in advance disbursement schedule would allow MCT to meet its cash flow needs, while recognizing the County's desire to implement reasonable fiscal controls with respect to advance payments.

Because MCT is approximately 90 percent dependent upon the County Government for its revenue, and because MCT does not yet have an established working capital fund, it is reasonable for the County to disburse funds according to a schedule that meets MCT's cash requirements. At the same time, it is reasonable that the County receive documentation of what MCT's cash flow needs are, so that a disbursement schedule that provides MCT with sufficient (but not excessive) revenue can be established.

This recommended approach assumes that MCT and the County will enter into a multi-year, fixed-price contract (see Recommendation C), and that under the terms of the County's master contract with MCT, disbursement of grant funds will not be on a cost reimbursement basis. While OLO understands why the County Government modified the structure of MCT's master contract to one of cost reimbursement (with a 16.7 percent advance) in FY90, as reviewed in Chapter VI, it is evident that this change has created concern among MCT officials. It is also worth noting that the comparative data summarized in Chapter VII shows that in a majority of the jurisdictions surveyed, funds are disbursed to public access providers in advance of actual expenditures.

Finally, while this recommendation would return to an arrangement under which certain grant funds to MCT are disbursed in advance of actual expenditures, (a practice followed until this fiscal year), this does not imply that the County has given up any of the authority it has to be informed about how grant funds are spent, and/or to withhold payment of grant funds if that were ever found to be a necessary part of an enforcement action.

Recommendation I: MCT should comply with the County Government's schedule for preparing the Cable Communications Plan

As long as MCT continues to receive funds allocated in the annual Cable Communications Plan, MCT should comply with the County Government's schedule for preparing the Cable Plan. The master contract executed between the County and MCT should, as it does now, set forth deadlines for the following:

Table 11

Sample of FY91 Master Contract Fund Disbursement Schedule as Proposed by MCT*

MONTH		AMOUNT	PERCENTAGE OF TOTAL ALLOCATION
July	1990	$ 140,000	8.0%
August		136,000	7.8
September		148,000	8.5
October		140,000	8.0
November		173,000	9.9
December		145,000	8.3
January	1991	148,000	8.5
February		136,000	7.8
March		136,000	7.8
April		139,000	8.0
May		167,000	9.6
June		136,152	7.8
TOTAL:		$1,744,152	100%

* The total allocation ($1,744,152) is based upon the Cable Office's FY91 maximum budget request guideline for MCT, as issued in September 1989. The recommended disbursements schedule for FY91 includes adjustments for the following cash requirements: Months with three paydays, FICA payments, lump-sum insurance premiums, and property tax payment.

- A date by which the Cable Office should inform MCT of the grant allocation expected for the coming fiscal year;

- A date by which MCT should submit a draft funding request to the Cable Office that shows how MCT plans to allocate the grant for the coming fiscal year; and

- A date by which MCT should submit its final funding request to the Cable Office.

It is acknowledged that adhering to the County Government's Cable Plan and budget preparation schedule requires MCT to prepare its budget for the next fiscal year almost nine months in advance, a requirement that MCT officials claim poses difficulties for a relatively small corporation. However, if as recommended above, MCT and the County Government enter into a three-year, fixed price master contract, then the expected grant allocation for each year of the master contract will already be established. This should enable the MCT Board of Directors to do some longer-term budget planning, and enable MCT to more easily meet the County's submission schedule.

Recommendation J: <u>The Cable Plan should continue to allocate funds to MCT in broad spending categories, and MCT should continue to have the authority to transfer funds between spending categories during the fiscal year.</u>

The Cable Plan should continue to allocate grant funds to MCT in broad spending categories, and not on a line-by-line basis. In addition, so long as total expenditures do not exceed the total grant allocation for the year, MCT should continue to have the flexibility MCT explicitly has had since FY89 to transfer funds between spending categories during the fiscal year.

It is recommended that the following requirements included in the FY90 master contract be excluded from future contracts executed between MCT and the County:

- Requiring MCT to inform the Cable Office 30 days in advance if actual expenditures are going to differ more than 10 percent from the expenditure categories outlined in the contract; and

- Requiring MCT to seek approval from the Cable Office for spending more than $160,000 in any one month, more than $900,000 during the first six months of the fiscal year, or for increasing the fixed rate per day limits established in the contract.

The County should remain informed about MCT's actual expenditures through the quarterly reports that outline both revenues and expenditures. (See Recommendation F.) In addition, the need to seek approval for increasing the fixed rate per day limits or exceeding monthly expenditure limits will no longer apply if the master contract is no longer structured as a cost reimbursement contract.

In addition to the above requirements regarding MCT's rate of spending, the FY90 contract stipulates that grant funds cannot be used to support staff and operating expenses involved in MCT's private fund raising efforts, with the exception of certain overhead costs. Whether or not this restriction should be continued in future master contracts between the County and MCT should be considered after the County's policy regarding advertising on PEG channels has been adopted. (See Other Recommendations, page 83.)

Recommendation K: **<u>In order to meet legitimate financial accountability requirements, it is appropriate for the County Government to continue to place certain conditions on MCT's receipt of funding in the master contract.</u>**

There is no reason why the County Government cannot continue to place certain conditions on MCT's receipt of funding. As recommended above (see Recommendation B), the County should establish, by Executive Regulation, minimal requirements to be met by any non-profit organization allocated the use of a PEG channel. In addition, certain conditions appear appropriate for inclusion in the master contract executed between the County and MCT.

Specifically, the following conditions, (all of which were written into the FY89 and/or FY90 master contracts), appear reasonable and appropriate to include in any future master contract executed between the County and MCT:

- A provision that all equipment purchased with funds provided by the contract becomes the property of the County upon the termination of the contract, and the related provision that prohibits MCT from pledging any equipment purchased with grant funds allocated by the County as collateral for obtaining a commercial bank loan;

- A provision that requires MCT to obtain approval from the County before assigning or transferring part of the County's contractual services to another entity;*

- A provision that the County may examine MCT's and any first-tier subcontractor's records relating to work performed under the contract to determine and verify compliance with the contract; and

- A provision that the County has the right to monitor, inspect, and evaluate or test all services required for by the contract.

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*To clarify this provision, the master contract should continue, as it does in FY90, to list specific services that do not require such prior County approval, e.g., contracts for training, legal services, accounting services, equipment maintenance.

Recommendation L: <u>The MCT Board should develop a long-range business plan that is shared and discussed with the County.</u>

During 1990, the MCT Board should develop a long-range business plan for MCT. This long-range business plan should be shared and discussed with the Cable Office staff. MCT's long-range business plan should include a strategy for building a working capital fund, the sources of which could include MCT's outside revenue, and funds "saved" as a result of the incentive clause added to the master contract in FY91 (see Recommendation D).

As discussed earlier in this report, MCT officials cite the need for a "working capital fund" to meet temporary and longer term cash demands, and to serve as a contingency fund for unbudgeted expenses. MCT's immediate need for such a fund should be met in the following ways:

- If, as recommended above (see Recommendation H), MCT's grant funds are disbursed according to a modified monthly in advance schedule that allows MCT to meets its cash requirements, then MCT's need for a working capital fund as a source of cash to meet temporary cash flow demands will be accommodated; and

- MCT's request for a fund to meet contingencies can be addressed by the Executive Director recommending that a portion of MCT's total grant be allocated as a "contingency fund" in MCT's annual budget. (Cable Office staff has agreed to this proposal as long as the size of the contingency fund is not excessive, and the use of any such contingency fund is reported in MCT's quarterly expenditure reports.)

Recommendation M: <u>Informal communication between MCT officials and Cable Office staff should be improved by increasing the opportunities for senior staff interaction.</u>

While the contract executed between the County and MCT should specify all of the information that MCT is required to provide to the County Government, the more informal exchange of information between MCT officials and the Cable Office staff should be improved. Some of the disagreements that have arisen over the past two years may in part have been caused by inadequate communication between MCT and County officials.

OLO recommends that the Executive Director of MCT and the Executive Staff Specialist in the Cable Office (who is responsible for administering the County's master contract with MCT) meet at least monthly for an informal exchange of information and ideas. The Executive Staff Specialist should resume attending the monthly MCT Board meetings, and the Executive Director of MCT should continue attending monthly Cable Communication Advisory Committee (CCAC) meetings. It would also be helpful for MCT to extend an open invitation to the Executive Staff Specialist to attend any and all MCT Board committee meetings, especially those involving issues in which the Cable Office has expressed an interest.

Under MCT's current bylaws, the County Executive and the County Council can each appoint one ex-officio member to MCT's Board. Although a member of the Council staff and a representative of the Cable Communications Advisory Committee (CCAC) have regularly attended MCT's Board meetings, there have been no official Council and Executive appointees to MCT's Board since FY86. It is the consensus of MCT and Cable Office staff that the bylaw requirement for official Council and Executive appointees could be deleted, and a strong channel of communication between the County and MCT established through regular attendance of Council and Cable Office staff at MCT meetings.

Other Recommendations

N. The County Government, with involvement from MCT and Cable TV Montgomery, should establish a policy governing the commercial use (including advertising) of PEG channels. This policy could appropriately be outlined in an Executive Regulation, promulgated pursuant to Chapter 8A. (Note: At the time of this writing, the Cable Office is in the process of preparing such an Executive Regulation, which is expected to be transmitted to the Council for action during the first half of 1990).

O. The two service contracts with MCT to provide support for the County Government Channel should continue to be generally structured as they have been for the past two years, as cost reimbursement contracts.

P. In addition to the performance evaluation that will be conducted by the County, the MCT Board of Directors should establish a plan for internal ongoing evaluation of MCT's efforts.

Q. The MCT Board of Directors should consider rotating auditors on a periodic basis. This is a practice followed by many entities, including the County Council.

R. The County Government should formalize the participation of MCT's employees in the County employees' health plan in an appropriate legal document that outlines the terms and conditions of this benefit.

IX. COMMENTS ON DRAFT REPORT

On January 12, 1990, OLO circulated a draft of this report to MCT, the Council Staff Director, and appropriate Executive branch offices and departments. In addition, Chapter VII, Comparative Information, was circulated for comments from the 13 public access providers surveyed.

All technical corrections received either orally or in writing by January 26, 1990, are incorporated into this final report. Written comments received from the President of MCT's Board of Directors, the Cable Office, the County Attorney's Office, the Office of Management and Budget, the Department of Finance, and the Office of Procurement are included in their entirety beginning on page 85.

Based upon the written comments received, this final report includes the following substantive changes:

- The report was revised to reflect the Director of the Department of Finance's comments about why the County Government changed its method of disbursing funds to contractors;

- As suggested by the Senior Assistant County Attorney, the report was revised to clarify that MCT's funding must be formally appropriated (by Council resolution) through the budget process as well as allocated in the annual Cable Communications Plan; and

- As suggested by the Director of the Office of Management and Budget, the Executive Summary was revised to include a summary of the report's major recommendations.

Montgomery
COMMUNITY TELEVISION, INC.
7548 Standish Place, Rockville, MD 20855

January 26, 1990

Mr. Andy Mansinne, Jr.
Office of Legislative Oversight
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear Mr. Mansinne:

This is in response to the draft report of the Office of Legislative Oversight (OLO) on the relationship between Montgomery Community Television, Inc. (MCT) and Montgomery County Government.

Let me begin by expressing MCT's appreciation of the County Council decision directing OLO to undertake this study which reflects a detailed and thorough investigation of all the issues. The resulting report, on the whole, is a fair and accurate statement of the differences between MCT and the County.

The report's recommendations do not represent the ideal solution that we might have wished. Many Board members had suggested different approaches than those contained in the report. We would have preferred, for example, to be named as the official access corporation in Montgomery County; we would have preferred to have received <u>some</u> funding directly from the cable company, particularly for the costs of NEWS 21; we would have preferred to have an unencumbered title to all the video equipment MCT owns.

Nonetheless, it is the consensus of the Board that, <u>taken as a whole</u>, the recommendations are workable and appear to go far toward resolving many problems which have concerned MCT for some years.

We cannot stress too strongly that we see each recommendation as a piece of a complex mosaic, which overall constitutes an acceptable compromise to vexing problems in the relationship of MCT and the County. If, however, certain recommendations are not adopted, it would appear to us to significantly weaken the total effect desired, and would call into question MCT's support for the OLO report. A striking example of this are the various recommendations that seek to resolve perhaps the most intransigent problem MCT has faced, that of not having a traditional working capital fund that can be used to meet the cash flow needs of an organization of our size.

Telephone (301) 424-1730 Fax (301) 294-7476

MCT welcomes the suggestion that OLO staff would be able to assist with the design of the performance evaluation contained in Recommendation "E".

With respect to other specific aspects of implementing the report's recommendations, we plan to discuss these in more detail when the Council and one of its committees reviews the document.

In conclusion, the OLO study, at page 68, states the objective of the study and the recommendations:

> "As a package, OLO's recommendations are offered as a set of reasonable compromises between positions expounded by those interviewed. It is OLO's perception that Executive branch staff and MCT officials are eager to resolve their current differences of opinion in order to establish a more productive working relationship."

MCT heartily agrees with this statement and believes that we are at the beginning of a new era in the relationship.

Moreover, the expeditious implementation of the recommendations will go far toward eliminating those areas of disagreement which may have interfered with the accomplishment of our public service mission. That objective I believe is one which MCT, the County Council and the County Executive mutually share, and which the adoption of OLO's recommendations can achieve.

Sincerely,

Reuben Lozner
President

Montgomery County Government

ROCKVILLE, MARYLAND 20850

M E M O R A N D U M

January 26, 1990

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

FROM: Lewis T. Roberts, Chief Administrative Officer

SUBJECT: DRAFT OLO Report #89-5, A Study of the Relationship between Montgomery County and Montgomery Community Television, Inc.

Thank you for the opportunity to comment on the Draft OLO Report #89-5, A Study of the Relationship between Montgomery County and Montgomery Community Television, Inc. The report is a well-balanced evaluation of the structural relationship between the County and Montgomery Community Television, Inc. Copies of comments from the Cable Office, the County Attorney's Office, the Office of Management and Budget, the Department of Finance, and the Procurement Office are attached.

The Executive Branch looks forward to discussing OLO Report #89-5 upon its release by the County Council. Thank you again for the opportunity to comment.

LTR/jw

Attachments

Montgomery County Government

ROCKVILLE, MARYLAND 20850

MEMORANDUM

January 25, 1990

TO: Andrew Mansinne, Jr., Director, Office of Legislative Oversight

FROM: Kay B. Stevens, Executive Staff Specialist, Cable Office

Kay B. Stevens

SUBJECT: Draft OLO Report #89-5, A Study of the Relationship between Montgomery County and Montgomery Community Television, Inc.

The Office of Legislative Oversight (OLO) is to be complimented on its very thorough study of the structural relationship between the County and MCT. Some complex and sensitive issues were involved in this study, and OLO has developed a package of well thought-out, constructive recommendations.

Regarding the specific recommendations in the report, the Cable Office has the following comments:

1. The Cable Office agrees with OLO that funding for Montgomery Community Television (MCT) should continue to be subject to annual appropriations. The Cable Office prefers to eliminate the Cable Plan as a document separate from the normal budget process because it essentially creates duplicative work for the Cable Office and Council staff. However, if the Council feels strongly that it wishes to continue to adopt part of the cable budget (the grants and settlement funds) through action on a separate Cable Plan, the Cable Office can continue to prepare the necessary documents.

2. The Cable Office agrees with OLO's recommendation that County control over MCT's Bylaws be eliminated once adequate requirements are established in law and/or Executive Regulation for any non-public entity which provides public, educational, or government access services to the County. The Cable Office is sensitive to the fact that eliminating County approval over MCT's bylaw changes would give MCT the power to modify certain key characteristics, such as the composition of the Board and its election process. Thus, if the County is to release its approval authority over MCT's bylaw changes, it will be important to carefully consider what is put in law. It will also be important for the County to create a mechanism for dispute resolution for cases where the County does not believe the non-profit corporation is fulfilling the terms or intent of the law.

Many of the items that OLO proposed be placed in Chapter 8A have already been proposed by the Executive Branch in Bill #26-89. The Cable Office will re-examine the wording of this bill to determine if any revisions are needed in light of OLO's recommendations.

3. Although the Cable Office has some concerns about how a fixed price can be developed for all of MCT's services, some of which are qualitative by nature, the Office is willing to pursue development of a fixed-price contract in accordance with OLO's recommendations. The Cable Office will seek the advice of the Office of Procurement and the County Attorney's Office on various fixed-pricing mechanisms.

However the Cable Office's willingness to pursue a three year, fixed-price contract is conditioned on the implementation of OLO's recommendation that a formal, comprehensive Performance Evaluation be undertaken in Year 2. This evaluation should be performed by the County Executive's designee. The Cable Office agrees with OLO that the design of this performance evaluation is extremely important and that it should be undertaken during this fiscal year. In order to assist in the transition to a smoother on-going working relationship between County and MCT, the Cable Office believes it would be most constructive if OLO would, as Phase II of its work effort on the County-MCT relationship, take the lead in hiring a consultant mutually agreeable to the County and MCT to do this task prior to FY 91.

The Cable Office also requests that Karen Orlansky be present and offer her advice during the contract negotiations with MCT on a fixed price contract. Although the Cable Office understands that, in concept, performance measures can be developed for a fixed price contract, there is great room for disagreement in any such negotiation as to what those specific performance measures will be. Therefore, OLO's assistance would be appreciated to assure a smooth transition.

Further, although OLO appears to recommend a single fixed price for a package of services, the Cable Office would prefer retaining the ability to negotiate individual prices for various components of services. At a minimum, the Cable Office would like to consider a separate price for public access services from professional productions (including the News Program).

The Cable Office is concerned that what is contained in a three-year, fixed price contract could be impacted by what the County ultimately decides concerning commercial use of PEG channels. Related to this is how much, if any, of MCT's costs associated with outside fundraising should the County financially support? Given that these questions may take some time to resolve, the Cable Office would like all parties to consider the possibility of extending MCT's current contract for approximately 3 months until the issues of performance measures, fixed price components, and fundraising are resolved.

4. The Cable Office is willing to consider OLO's recommendation to structure the FY 91 MCT contract to permit MCT to retain unused funds for certain specified purposes (e.g., capital outlay) as long as MCT agrees to keep such funds in separately identifiable accounts and regularly reports to the County on the uses of such funds. In fact, this recommendation is an important one in increasing the Cable Office's comfort level in changing to a fixed price contract where services were not competitively bid because it assures complete accountability for all the County cable funds provided to MCT.

5. The Cable Office has no objection to OLO's recommendation of re-instituting monthly payments in advance, recognizing however that it is the Department of Finance that has approval authority over advances.

6. The Cable Office agrees with OLO's recommendations on the frequency of reports for the FY 91 contract provided that the contract is changed from cost reimbursement to fixed price.

7. The Cable Office agrees to consider modifying the News Program requirement in the FY 91 contract to not specify its exact format (i.e., 30 minutes daily, Monday-Friday), but rather to require an amount of a specific programming type, such as " x hours of news and public affairs".

8. The Cable Office will seek the advice of the County Attorney's Office as to what legal document should contain the terms of MCT's participation in the County's Health Plan.

Again, the Cable Office wishes to express its appreciation to OLO, and specifically Karen Orlansky, not only for the recommendations contained in the report, but for helping to build a more positive working relationship between the County and MCT during the course of the study.

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M E M O R A N D U M

January 24, 1990

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

FROM: A. Katherine Hart A.K. Hart
Senior Assistant County Attorney

RE: Draft OLO Report No. 89-5, A study of the Relationship Between Montgomery County and Montgomery Community Television, Inc.

I have reviewed the draft copy of OLO Report No. 89-5 which is concerned with the relationship between Montgomery County and Montgomery Community Television, Inc. I would like to commend Karen Orlansky for her fine job in relating what is essentially a somewhat complex historical relationship.

While I have reviewed the entire report, this memorandum will only address the recommendations proposed by OLO. The first recommendation concerns the issue that funding of MCT should continue to be subject to the annual Cable Communications Plan. The legal issue related this recommendation is that all funds taken into the County treasury must be allocated through an appropriate budget process. This recommendation should make clear that funding to MCT must be appropriated through the budget process as well as the cable plan. If the requirements for a cable plan are deleted pursuant to the changes recommended in Bill No. 26-89, MCT funding will still have to be appropriated through the budget process. This recommendation should make clear that in any event, the Council only appropriates funds on an annual basis through the budget process. The contract with MCT must reflect that in any year that there is not sufficient funds appropriated to sufficiently fund the MCT contract, then that contract will be terminated.

Secondly, as I understand how a fixed-price contract works, MCT would perform the services required in the master contract for a specific price. If MCT is able to perform those services for less than the price that we have agreed on, then there is no "use it or loss it," portion of the contract that would apply. If MCT is able to provide the services at a cost less than is established in the contract, then they would be able to use that money for whatever purposes they deem to be appropriate unless the contract requires otherwise. It would not revert to the County so long as all the services required in the contract are completed.

Thirdly, in many fixed-price contracts the payment schedule is predicated on certain performance criteria being completed, as opposed to the report's recommendation that the funds should be dispersed in a certain amount over the course of a year. It seems more appropriate to pay for the services under the contract by taking the overall value of the contract and dividing it by 12 and paying the same amount each month. This is assuming that the County's Office of Finance will permit a grant contract to payment to be made up front as opposed to after the services have been provided and in an amount that will equal 1/12 of the contract value as opposed to the 16.7 percent that is permitted to be paid in advance by the Finance Department at the present time. This also raises the issue that the County would be treating MCT as a County grantee differently than other grantees that the County presently has a contract with and may cause problems in terms of other grantees wanting their payment up front also. Another way of resolving this issue is to have the Council appropriate a certain amount of money to MCT to be used as a working capital fund with an agreement that it will be repaid at a certain point in time such as when the contract is over or at a later time if the contract is renewed.

I do not agree with the recommendation concerning deleting from the contract the requirement that MCT inform the Cable Office 30 days in advance if actual expenditures are going to differ more than 10 percent from the expenditure categories outlined in the contract. This requirement of the contract makes good sense and is not that onerous. It may be more reasonable to have MCT inform the County within a different time period, but the requirement for informing the County of the actual expenditure exceeding 10 percent in any category is an appropriate requirement, so that the County might better monitor the expenditures under the contract. This is especially true when other reporting requirements are recommended to be done on a quarterly basis.

I would like to suggest that if the position of the Council and Executive members of the MCT Board are deleted from the MCT by-laws, that a member of the CCAC be added as a permanent, voting member of the Board. This will provide the MCT Board with a member with some expertise in the cable TV area and that member could serve as a liaison between the County and the MCT Board without being a County employee so as to preserve the Board's independence.

I appreciate this opportunity to comment on OLO's report on the MCT and County relationship. I am available to discuss these matters with appropriate staff.

AKH:pae
0090.AKH:90.00574

147
1/18/90
LRoberts

M E M O R A N D U M

January 18, 1990

TO: Andrew Mansinne, Jr., Director, Office of Legislative Oversight

VIA: Lewis T. Roberts, Chief Administrative Officer

FROM: Max R. Bohnstedt, Director, Department of Finance

SUBJECT: Draft OLO Report 89-5

The report on the relationship between the Montgomery County and Montgomery Community Television, Inc. was, I thought, comprehensive and well done. I have two observations which I believe would better describe fiscal interactions.

ADVANCE PAYMENTS

The report states that the Finance Department changed its method of disbursing funds to contractors, and did this primarily to enhance the County's ability to earn interest. This gives the Finance Department credit for more authority than we have and suggests that what was a fortunate by-product of good fiscal controls was the primary reason.

Historically, the compensation clauses of vendor contracts were negotiated between using departments and vendors without any systemic controls or fiscal guidance. As a result, there were inconsistent, at times unnecessary and, at best, uncontrolled awards of advance payment to vendor's, not-for-profit and for profit.

To implement reasonable, consistent and prudent fiscal controls on advance payments, the Procurement Regulations required that the Finance Director approve any advance payment provisions in contracts. This provided a central, consistent review and control of these provisions. The Chief Administrative Officer then provided a statement of guidance governing the award of advance payments which the Finance Department was charged with implementing. A consistent standard application process and form were developed by an ACAO and agreed to by all department directors contracting with not-for-profit vendors. The process is fexible enough to provide for justified variations. No justified request has been refused.

The fact that the County earns interest on funds which were formerly lost to its control and that the County's elected officials retain the ability and authority to allocate these earnings is a happy benefit of prudent fiscal controls. Additionally, the fact that the County's contractor's are now working for the contracted compensation instead of the contract price, plus interest earnings, is a benefit of prudent fiscal controls. We would have pursued this course of action on its merits with or without the side benefits.

The characterization in the report seems to validate a pecuniary perspective expressed by some respondents instead of contrasting that perspective with the underlying policy basis.

DISBURSEMENT/CUSTODY OF FUNDS

The discussion of disbursement patterns does not separate the emotional equating of custody with availability with accountability.

Custody is a possessory control concept with certain side benefits. Availability is a very real issue of whether dollars are in the bank to cover checks that are written. Accountability is performance that justifies the other two.

Mixing them in the discussion clouds the issues instead of clarifying them. There has not been a problem of MCTV receiving dollars necessary to cover checks written (availability) if they have made proper, timely application or invoicing (accountability). Holding idle funds (custody) defers or eliminates enforcement of accountability.

I believe the issue would be better joined as a discussion of accountability, not the flow of funds. The flow of funds has been and will only be a problem if performance or invoicing has been a problem.

The resolution of these issues would seem to be better served by the definition of what we are buying and how MCTV will demonstrate it has provided the service. Given the proper definitions, the disbursement issue, as an issue instead of an advocacy position recedes.

MRB:jey

M E M O R A N D U M

January 24, 1990

To: Andrew Mansinne, Jr. Director, Office of Legislative Oversight

From: Robert K. Kendal, Director
Office of Management and Budget Robert K Kendal

Subject: OLO Draft Report on Montgomery Community Television

OMB supports the recommendations of this report as constructive steps toward a better working relationship between MCT and the County Government.

To assure the smooth implementation of recommendation E, the regular performance evaluation of MCT, OMB recommends that OLO take responsibility for overseeing the design of that evaluation. A mini contract for consulting assistance could be funded in FY 90 out of the Cable TV Special Revenue Fund.

For ready reference, a list of the recommendations is attached. Such a list should be included in the Executive Summary of the report.

RKK/jh/sa

Attachment: List of Recommendations

RECOMMENDATIONS OF THE OLO STUDY
OF THE RELATIONSHIP BETWEEN THE COUNTY GOVERNMENT
AND MONTGOMERY COMMUNITY TELEVISION
January 1990

A. Funding of MCT should continue to be subject to the annual Cable Communications Plan.

B. Chapter 8A, Cable Communications, should be amended to specify the essential characteristics of all PEG channel operators that are not public agencies; and the current provisions that require Council and Executive approval of amendments to MCT's bylaws and articles of incorporation should be eliminated.

C. The County's master contract with MCT should be structured as a three-year fixed price contract.

D. The master contract executed between the County and MCT should include an incentive clause.

E. The County Government should conduct a performance evaluation of MCT's operations in the second year of the three-year master contract.

F. MCT should provide the County Government with regular and complete reports of how grant monies allocated by the County to MCT are expended.

G. The master contract executed between the County Government and MCT should not contain any requirement that MCT produce a specific program.

H. For services performed under the master contract, the County should disburse grant funds allocated to MCT according to a schedule that balances MCT's cash flow needs with the County Government's policy of maximizing the amount of interest earned on County-controlled funds.

I. MCT should comply with the County Government's schedule for preparing the Cable Communications Plan.

J. The Cable Plan should continue to allocate funds to MCT in broad spending categories, and MCT should continue to have the authority to transfer funds between spending categories during the fiscal year.

K. In order to meet legitimate financial accountability requirements, it is appropriate for the County Government to continue to place certain conditions on MCT's receipt of funding in the master contract.

L. The MCT Board should develop a long-range business plan that is shared and discussed with the County.

M. Informal communication between MCT officials and Cable Office staff should be improved by increasing the opportunities for senior staff interaction.

N. The County Government, with involvement from MCT and Cable TV Montgomery, should establish a policy governing the commercial use (including advertising) of PEG channels. This policy could appropriately be outlined in an Executive Regulation, promulgated pursuant to Chapter 8A. (Note: At the time of this writing, the Cable Office is in the process of preparing such an Executive Regulation, which is expected to be transmitted to the Council for action during the first half of 1990).

O. The two service contracts with MCT to provide support for the County Government Channel should continue to be structured as they have been for the past two years, as cost reimbursement contracts.

P. In addition to the performance evaluation that will be conducted by the County, the MCT Board of Directors should establish a plan for internal ongoing evaluation of MCT's efforts.

Q. The MCT Board of Directors should consider rotating auditors on a periodic basis. This is a practice followed by many entities, including the County Council.

R. The participation of MCT's employees in the County employees' health plan should be formally included as part of the County's master contract with MCT.

OLO-MCT

Montgomery County Government

MEMORANDUM

January 22, 1990

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

FROM: Willard Walton, Jr., Director W. Walton
Office of Procurement

SUBJECT: DRAFT OLO Report No. 89-5 - A Study of the Relationship between Montgomery County & Montgomery Community Television, Inc.

The subject draft report has been reviewed by the Office of Procurement and the following comments are offered:

1. Page 71, Recommendation C: I agree with the concept of a multi-year fixed price contract. However, it would appear that the nature of some of the services required make it difficult to establish a fixed price contract unless the pricing data from the current Master Contract is sufficient to establish a target and ceiling price.

2. Page 73, Recommendation D: I support fully the recommendation for the inclusion of an incentive clause into the contract.

3. Other recommendations relating to the Master Contract could simply be included via contract amendment or by inserting specific clauses into a new contract, if desired by the County.

WW:pf:adm139

Office of Procurement
Rockville Metro Center, 250 Hungerford Drive, Room 175, Rockville, Maryland 20850-4153, 301/217-2062

APPENDIX A

Resolution No. 11-1504
Introduced: June 13, 1989
Adopted: June 20, 1989

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: County Council

Subject: Amendment to the CY 1989 Work Program of the Office of Legislative Oversight

Background

1. On April 4, 1989, the Council adopted Resolution No. 11-1360, Subject: CY 1989 Work Program of the Office of Legislative Oversight, which includes a provision that the Office of Legislative Oversight will be responsive to requests by the County Council for projects in addition to those listed in the Work Program.

2. During the Council's discussions on the FY90 Cable Plan and Montgomery Community Television, Incorporated (MCT) FY90 budget, the Director of the Office of Management and Budget recommended that the Council request the Office of Legislative Oversight to examine a number of issues related to MCT.

3. MCT was originally created in September, 1984, as a private, independent, non-profit, tax-exempt corporation to manage public access cable programming and the "flagship channel" for the County. Since 1984, MCT's activities have expanded to include producing a daily local news program, and providing support services to other public, educational, and governmental operators, (e.g., technical personnel for the County Government channel, equipment maintenance and playback services for the County Government and the City of Rockville).

4. Currently, MCT is funded primarily from grant and settlement funds provided under the County's franchise agreement with Cable T.V. Montgomery. These funds are deposited in the County's Cable TV Special Revenue Fund and dispensed to user agencies through the annual "Cable Communication Plan for Montgomery County". For the two years since transfer of the franchise from Tribune-United to Cable T.V. Montgomery, MCT and the County Government have operated under three contracts (one master contract for public access and local origination, and two technical service contracts for the County Government channel) that detail MCT's scope of services and the County's payment schedule.

Action

The County Council for Montgomery County, Maryland, approves the following resolution:

The Office of Legislative Oversight, as an additional project in its CY 1989 Work Program, and under the authority of Chapter 29A of the Montgomery County Code, will:

- Examine the structure of the relationship between the County Government and Montgomery Community Television, Incorporated (MCT), with emphasis on the financial arrangement that has evolved over the past five years; and

- Recommend, as needed, administrative, legislative, and/or other changes to ensure that the County is able to exercise an appropriate degree of oversight over MCT without infringing upon MCT's ability to operate as a private, independent, non-profit corporation.

OLO's examination is expected to include the following specific issues:

(1) The method and schedule of dispensing franchise revenues to MCT;

(2) The format, scope, and frequency of MCT's financial accounting reports to the County;

(3) The respective roles of the County, the MCT's Board of Directors, and MCT Management in the development of MCT's budget and annual work program; and

(4) The respective roles of the County, the MCT's Board of Directors, and MCT Management in monitoring the implementation of the Council's appropriated budget to MCT.

This is a correct copy of Council action.

Kathleen A. Freedman

Kathleen A. Freedman, CMC
Secretary of the Council

EXCERPT FROM MCT BYLAWS, ARTICLE I: PURPOSES, AS AMENDED ON NOVEMBER 2, 1984

This is the form of Bylaws adopted by the initial directors of Montgomery Community Television, Inc., including amendments dated November 2, 1984.

David P. Towey

David P. Towey

BYLAWS OF MONTGOMERY COMMUNITY TELEVISION, INC.

A Nonstock Corporation

ARTICLE I

Purposes

The purposes for which the Corporation is formed shall be to conduct activities for charitable, literary and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954, as the same has been or may be amended from time to time, or any corresponding section of any future tax laws. Such activites may include:

A. Developing and establishing policies with respect to locally produced cable programming to be presented by means of any cable television system in Montgomery County.

B. Acting as a vehicle for coordinating the public, educational and governmental access programming to be presented over any cable television system in Montgomery County, Maryland.

C. Promoting and supporting the participation of organizations and individuals in Montgomery County in creating programming concerning people, events and issues of interest to the County.

D. Encouraging public access programming that serves viewers as well as program producers by promoting high production quality, responsible and diverse points of view, balance in subject matter and regular scheduling.

E. Supporting governmental access programming as provided for in Montgomery County's Cable Communications Plans.

F. Managing and scheduling a "Flagship Channel" as a means for presenting the best of locally produced programming carried on public, educational and governmental access channels.

G. Receiving and disbursing such monies as may be paid to the Corporation for support of locally produced cable programming.

LIST OF COMMUNITY GROUPS WITH REPRESENTATION ON MCT BOARD OF DIRECTORS*

Section 5. Selection of Directors. One director shall be selected by each of the following twelve (12) organizations or groups of organizations:

A. American Federation of Labor/Congress of Industrial Organizations, Metropolitan Washington Council
B. Catholic Archdiocese of Washington, D.C./Community Ministry of Montgomery County/Jewish Community Council of Greater Washington
C. League of Women Voters of Montgomery County, Maryland, Inc.
D. Montgomery County Arts Council, Inc./Montgomery County Council Commission on the Humanities
E. Montgomery County Association of Senior Citizens Organizations
F. Montgomery County Branch of the National Association for the Advancement of Colored People
G. Montgomery County Chamber of Commerce
H. Montgomery County Civic Federation/Allied Civic Group
I. Montgomery County Council of Parent-Teacher Associations
J. Montgomery County United Way
K. Parents Without Partners, Inc. (Chapter 60)
L. Washington Association for Television and Children (WATCH)

Source: MCT Bylaws, Article II.

EXCERPT FROM CABLE FRANCHISE AGREEMENT AS AMENDED ON NOVEMBER 14, 1986

SECTION 30. SERVICES AND PROGRAMMING

(A) Initial Services and Programming. Franchisee shall provide, as a minimum, the initial services and programming listed in Exhibit C. Franchisee shall not reduce the number of program services without prior written notification to and approval by Franchisor, except as provided by law. Franchisor shall provide a written decision of its approval or disapproval to the Franchisee within thirty (30) days from receipt of this notification. If the Franchisee reduces the number of program services because such services are no longer available or offered, then the Franchisee may provide comparable program services, when they become available. The Franchisor shall approve reductions in the services and programming provided that the mix, quality, and level of services are maintained. Franchisee may add new services at any time. Franchisee may combine programming into composite channels to improve efficiency of channel utilization or to attract a larger viewing audience except those channels specified in Section 30(B) below.

The Franchisee shall submit a monthly report to the Franchisor, in a form acceptable to the Franchisor, which shall contain information concerning the number of subscribers on each Tier and the services they are receiving from the Franchisee.

(B) PEG Channels

(1) The Franchisee shall provide on the residential network the following channels for public, educational and government access:

1 full-time video channel for County Government use.
2 full-time video channels for Education Access (1 for Montgomery County Public Schools, 1 for Montgomery College).
3 full-time video channels for Municipal use (1 for City of Rockville, 1 for City of Takoma Park, 1 for Montgomery County Chapter of Maryland Municipal League).
1 full-time video channel for Public Access (Montgomery Community Television).

In addition, 6 full-time video channels shall be held in reserve for future public, educational, and government access (hereinafter referred to as "PEG") use. Use of these reserve channels shall be assigned by the County and shall be activated by the Franchisee within 30 calendar days of the County's request.

(2) The County may revise the assignment of PEG channels to particular organizations to promote the effective use of such channels, subject to county-municipal agreements.

(3) All PEG channels shall be provided on the lowest priced basic service tier.

(4) The Franchisee must maintain the same signal quality for PEG channels as for other channels.

(5) If the Franchisee decides to change the channel designations for PEG channels, it must provide six months notice to the County prior to doing so, and will reimburse the County and/or PEG users for any costs incurred for purchasing or modifying any equipment or for making logo changes necessitated by the channel designation changes. Alternatively, the Franchisee may choose to supply such equipment itself, provided such equipment is satisfactory to the County or PEG users.

(C) Deleted.

(D) Franchisee shall activate all access channels at system turn-on unless otherwise specified by Franchisor.

(E) Franchisor or its designee(s) shall be entirely responsible for control, supervision and management of all PEG channels, the interconnect channel, and any additional channels that may be provided in the future for either of these purposes.

(F) The non-profit access corporation shall initially be entirely responsible for control, supervision, and management of all community access channels and any additional channels that may be provided in the future for this purpose. In the event the non-profit access corporation ceases to be the designee of the Franchisor, all responsibility for control, supervision, and management of all community access channels shall be transferred to the Franchisor.

(G) Program Guides.

(1) Franchisee shall arrange for the provision of a monthly printed program guide that provides a listing of all programming services and channels available, including PEG programs.

(2) Franchisee shall aid PEG channel operators in communicating information to subscribers about programs or services, such as bill stuffers or material distribution through Franchisee's marketing/sales representatives. PEG channel operators shall bear any reasonable incremental costs associated with communicating such information to subscribers.

(3) Printed program guides shall carry reasonable publicity without charge for PEG programming. Such display ad and narrative publicity shall be in addition to program listings.

(H) Local Programming Audience Measurement

If the Franchisee conducts comprehensive written viewership surveys, it shall provide the Franchisor with the opportunity to include questions relating to viewership of PEG programming. The Franchisee shall provide to the Franchisor the aggregate results of such surveys of PEG programming.

(I) The transmission of obscene cable services by the franchisee on channels subject to its editorial control is prohibited.