TABLE OF CONTENTS

CHAPTER 1

A Brief History of Cable Television in the United States

8	1.01	Early Broadcasting Regulation	1-2
•	1.02	Early Cable	1-6
-	1.03	First FCC Review of Cable	1-8
_	1.04	1959 First Report and Order	1-11
_	1.05	The Carter Mountain Case	1-13
•	1.06	The Intermountain Broadcasting and Cable	
U		Vision Cases	1-15
§	1.07	The 1965 Order and Inquiry	1-16
_	1.08	Legislative Proposals and Congressional	
Ü		Hearings	1-17
§	1.09	The 1966 Second Report and Order	1-18
8	1.10	Restrictions on Telephone Common Carriers	1-19
§	1.11	1968-1972 Events	1-20
§	1.12	The 1972 Cable Rules	1-22
§	1.13	Copyrights	1-23
§	1.14	The 1984 Cable Act	1-24
§	1.15	The 1992 Cable Act	1-25
		[1] Consideration of Re-Regulation of	
		Cable	1-25
		[2] Enactment of the 1992 Cable Act	1-27
		[3] Effects of the 1992 Act	1-28
		[4] Implementation and Judicial Review	
		of the 1992 Act	1-32
§	1.16	The Telecommunications Act of 1996	1-37
		[1] Enactment of the 1996 Telecommunications	
		Act	1-37
		[2] Effects of the 1996 Act	1-38
		[3] Implementation and Judicial Review of the	
		1996 Act	1-44

iv	ALL ABOUT CABLE AND BROADBAND	
§ 1.17	Recent Developments	. 1-70
	of Video Programming	. 1-70
	Communications Act	
	[2] Pricing and Usage Statistics	
	[a] Video Marketplace Statistics	
	[b] Broadband Marketplace Statistics [i] Tracking Actual Broadband	
	Performance	
	[c] Explaining Broadband Non-Use[d] Section 706 Broadband Service	. 1-80.1
	Benchmarking	. 1-80.3
	[e] Improving Broadband Data	
	Accuracy	. 1-80.4
	Developments	
	Electronics	
	[b] Merger of Intelsat and PanAmSat[c] FCC Approves AT&T-BellSouth	. 1-85
	Merger	
	[d] Comcast NBC-Universal	. 1-88
	[e] Comcast-Time Warner Cable	
	[f] AT&T-DirecTV	. 1-94
	House Networks	. 1-97
	[h] Altice N.VCablevision	. 1-102
	[i] AT&T-Time Warner	. 1-103
	[j] T-Mobile-Sprint	. 1-110
	CHAPTER 2	
	Federal Regulation of Cable Television	ı
§ 2.01	Overview	. 2-3
§ 2.02		
, _	[1] Early History	
	[2] The <i>Crisp</i> Decision	
	Television to the Communications Act	. 2-9
§ 2.03		

	[1] Definition of Multichannel Video	
	Programming Distributor	2-31
	[2] Franchising Requirements for Internet	
	Protocol Television	2-34
§ 2.04	Registration of Cable Systems	2-34.3
	[1] Small Systems	2-34.4
§ 2.05	Franchise Fee Limitations	2-35
§ 2.06	Local Broadcast Television Signal Carriage	2-36.4
	[1] Previous Must-Carry Rules	2-47
	[a] Classification of Cable Systems	2-47
	[b] Qualifying Signals	2-47
	[2] The Challenge to the Must-Carry Rules	2-48
	[3] The FCC Response	2-48.2
	[a] Interim Must-Carry Rules	2-48.3
	[b] Consumer Education Programs	2-48.4
	[c] The FCC's Constitutional Analysis	2-48.5
	[4] Challenges to the Revised Must-Carry	
	Rules	2-48.7
	[5] Must-Carry Under the 1992 Cable Act	2-48.8
§ 2.06A	Retransmission Consent	2-55
	[1] Hands Off Approach in Assessing	
	What Constitutes Good Faith in	
	Retransmission Consent Negotiations	2-60
	[2] Speedy Dispute Resolution	2-61
	[3] Reforms	2-62.2
	[4] FCC Intervention	2-62.5
§ 2.06B	Digital Television "Must Carry"	2-62.10
	[1] Digital Must-Carry Reconsideration	2-62.11
	[2] Digital Broadcast Signal Agreement	
	Brokered Between APTS and NCTA	2-62.15
	[3] Conversion of Digital Signals to Analog	2-62.16
	[4] Complaints and Litigation	2-62.20
	[5] Migrating Content to Digital Tiers	2-62.21
	[6] New Procedures for Identifying	
	"Significantly Viewed" Broadcast	
0.000	Stations	2-62.23
§ 2.06C	Must-Carry—Direct Broadcast Satellite	2 (2 2 (
	Operators	2-62.26
	[1] SHVIA Reauthorization	2-62.28
	[2] Satellite Home Viewer Extension and	0.60.00
	Reauthorization Act	2-62.29
	[a] Extended Signal Importation	0.60.00
	Opportunities	2-62.30

	TABLE OF CONTENTS	vi
	[a] Next Generation Broadcast TV	
	Transmission Standard	2-89
	[2] Advertising Volume	2-92
§ 2.12	Cable System Records	2-92.2
§ 2.13	Equal Employment Opportunities	2-92.5
§ 2.14	Forms and Reports	2-103
	[1] Forms to Be Submitted to the FCC	2-103
	[2] Streamlining Reporting Requirements	2-104
§ 2.15	Cable System Ownership	2-106
	[1] Reexamination of Horizontal and Vertical	
	Cable Ownership Restrictions	2-108
	[a] FCC Proposed Caps	2-109
	[b] Judicial Reception	2-110.3
	[2] Local Broadcast Station-Cable System	2 110 /
	Cross-Ownership	2-110.4
	[3] Network-Cable Cross-Ownership	2-112
	[4] Cable-Telephone Company	2 11/
	Cross-Ownership	2-114
	[5] The Video Dialtone Policy	2-127
	* *	2-128.11
	Policy	2-120.11
	Ownership	2-128.17
§ 2.16	Cable Television Relay Service	2-128.23
§ 2.17	Home Wiring.	2-128.25
3 2.17	[1] Home Run Cable in Multiple Dwelling	2 120.20
	Units	2-138
	CHAPTER 3	
	State and Local Regulation of Cable Televisi	on
	(Except Franchising)	OII
§ 3.01	State and Local Jurisdiction	3-2
§ 3.02	Regulation of Rates	3-7
	[1] Overview: The Pendulum Swings of Rate	
	Regulation	3-7
	[2] Rate Deregulation Under the 1984 Cable	
	Act	3-8
	[3] Rate Deregulation Under the 1992 Cable	
	Act	3-13
	[4] Phasing Out of Rate Regulation Under	
	the 1996 Act	3-22
	[5] Rate Regulation Issues	3-26

viii	ALL ABOUT CABLE AND BROADBAND	
	[a] Scope of Regulation—	
	"Effective Competition"	3-26
	[b] State and Local Participation in	2 20
	Rate Regulation	3-28
	Service Rates	3-34
	[d] Regulation of Rates for Other	3 3
	Services and Equipment	3-52
	[e] Other Rate Regulation	
	Provisions	3-56
	[f] Proposal to Remove All	2 55
8 2 02 4	Remaining Rate Regulation	3-57
§ 3.02A	Preemption of State and Local Efforts to Expand Regulation: Competing Media and	
	Technical Standards	3-60
	[1] Microwave Transmissions	3-64.3
	[a] OTT Competition as a Basis for	2 0
	Rate Deregulation	3-64.4
	[2] Cross Ownership	3-64.5
	[3] SMATV	3-64.8
	[4] Technical Performance Standards	3-64.9
	[5] Satellite Antennas	3-66
	[a] Federal Preemption of Municipal	2 (0 2
	DBS Regulations	3-68.2
	Air Reception of Video Programming in	
	Multiple Dwelling Units	3-68.4
§ 3.02B	An Alternative Approach to Regulation:	2 00.
Ü	Social Contracts	3-69
§ 3.03	Cable Access to Property	3-76
	[1] The Cable Act	3-76
	[2] Constitutionality of Access	3-78
0.204	[3] Access to Multiple Dwelling Units	3-80.1
§ 3.04	State Activities	3-81
	CHAPTER 4	
	Franchising: Defining the Local Market	
§ 4.01	Introduction	4-2
§ 4.02	The Franchising Process	4-5 4-5
	[1] Historically	4-3
	Cable Legislation	4-14

	TABLE OF CONTENTS	ix
	[3] Consumer Protection and Customer	
	Service	4-23
	[4] A General Description of the Franchising	
	Process	4-25
	[a] First Steps	4-26
	[b] Request for Proposals	4-26
	[c] Selection	4-27
§ 4.03	Legal Limits on Franchising	4-31
	[1] Antitrust Issues	4-31
	[2] Constitutional Issues.	4-32
	[3] Developments in Franchise Fees and	1 5 1
	Taxes	4-54
	[a] Fee Based on Advertising	4-55
	Revenues	4-33
	[b] Non-Franchise Fee Payments Required When Cable Operators Provide	
	Telecommunication Services	4-55
	[4] FCC and State Attempts to Streamline	7-33
	Video Franchising Rules	4-56
	[a] Statewide Service Authorizations	4-62
	[b] Jurisdictional Issues	4-62.1
§ 4.04	Franchise Renewals.	4-62.5
§ 4.05	Competitive Franchising	4-62.14
§ 4.06	State and Local Involvement in Franchise	
O	Transfers	4-71
	CHAPTER 5	
(Competition in The Subscription Video Mark	et:
	Issues and Trends	
§ 5.01	Introduction	5-2
	[1] In General	5-2
	[2] A Brief Historical View	5-4
§ 5.02	Methods of Delivering Subscription	
	Video Service	5-6
	[1] Multipoint Distribution Service (MDS)	
	and Multichannel Multipoint	
	Distribution Service (MMDS)	5-7
	[2] Direct Broadcast Satellite (DBS)	5-9
	[a] Judicial Rejection of DBS Auctions	
	Force New Licensing Procedures	5-14.1
	r locedules	J-14.1

	[3]	Master Antenna Television (MATV) and Satellite Master Antenna Television	
		(SMATV)	5-14.2
	[4]	Internet Protocol Television	5-19
	[5]	IPTV Regulatory Status	5-20
	[-]	[a] Seeking Minimal Regulation	5-20
		[b] Caption Requirements	5-20.3
§ 5.03	The	Problem of "Siphoning"	5-21
§ 5.04	Ant	itrust Considerations	5-26
3 - 1 - 1	[1]	Introduction	5-26
	LJ	[a] Reconsidering Media Ownership	
		Rules	5-27
	[2]	The Video Delivery Market	5-28.3
	[3]	Business Combinations	5-29
	r. 1	[a] Discrimination by Programmers	
		Against Nonaffiliated Delivery	
		Systems	5-31
		[b] Cable System Exclusion of	
		Nonaffiliated Programmers	5-33
	[4]	Level Competitive Playing Field with	
		Overbuilders	5-38.4
	[5]	Limits on Class Action Lawsuits	5-38.5
§ 5.05		ring and Buy-Throughs	5-39
§ 5.06		Future of Video Services	5-43
O	[1]	Set-Top Box Policies and Rules	5-43
		[a] Limited Waivers of the Integrated	
		Set-Top Box Prohibition	5-46
		[b] Promoting Set-Top Box	
		Competition	5-50
		[c] Termination of CableCard	
		Consumer Safeguards	5-52
	[2]	Stand Alone Market Questions	5-53
§ 5.07		ellite-Delivered Programming	5-69
§ 5.08		ft of Service	5-73
Ü	[1]	Introduction	5-73
		Federal Law	5-73
		[a] STV and MDS/MMDS	5-73
		[b] Satellite Delivered Television	
		Programming	5-77
		[c] Cable Delivered Programming	5-78.2
		[d] Copyright Act of 1976	5-80
	[3]	State Law	5-83

	TABLE OF CONTENTS	Xi
	[4] Scrambling and Encryption [a] Pricing and Distribution [b] Signal Scrambling Technolog [c] Basic Service Tier Encryption	5-85 gy 5-87
	CHAPTER 6	
	Significant Problems	
§ 6.01	Introduction	6-6
§ 6.02	Pole Attachments	6-6.2
Ü	[1] Background	
	Amendments	6-6.4
	[3] The Original FCC Regulations[4] Summary of FCC Complaint	
	Procedures	
	[5] Decisions on Pole Attachments [a] Standing to Sue Under Antit	rust
	Laws[b] Calculation of Pole Attachmo	ent
	Costs	
	[c] Retaliatory Acts[d] Constitutional Challenge to t	he Pole
	Attachments Act	
	[6] The 1996 Telecommunications Ac	
	Amendments	6-16
	Pole Attachments	6-26.6
	[8] Long Term Impact of Service	
	Classifications	
	[9] Pole Attachment Reform	
	[a] Appellate Court Review[b] Revised Pole Attachment	
	Complaint Procedures [c] Efforts to Expedite Pole	
	Attachments	
§ 6.03	Copyrights	
	[1] Background	pulsory
	Copyright Licenses	
	[a] The Cable Compulsory Licer[b] The Passive Carrier Exemption	

	TABLE OF CONTENTS	xiii
	[a] Federal Legislation	6-59
	Satellite Programming	6-73
	[b] State Legislation	6-74
	[4] Obscenity and Indecency on the Internet	6-80
§ 6.06	Safeguarding Children	6-93
	[1] Violence, Ratings, and the V-Chip[2] Excessive Commercialization and	6-93
	Unlawful Product Endorsements	6-99
	[3] Digital Television Broadcaster Obligations	
	to Children	6-100
	[4] Report and Order on Violent	6 102
	Programming	6-102
	[5] Child Safe Viewing Act of	(102
	2001 Report	6-103
	[6] Protecting Children and Empowering Parents in an Evolving Media	
	Landscape	6-105
§ 6.07	Privacy Protection	6-107
O	[1] Background	6-107
	[2] Records and the Right to Privacy [3] Cable Television Privacy Under the	6-108
	Cable Act	6-111
	[4] Internet Service Provider Requirements	6-114
§ 6.08	Convergence and Regulatory Asymmetry	6-118.3
3	[1] The FCC Tries to Become Technology	0 22010
	Agnostic, By Differentiating	
	Telecommunications Capabilities	
	From Services.	6-118.8
	[2] Subordinating and Differentiating	
	Telecommunications Capabilities	
	and Services	6-118.9
	[3] Equating Internet Access Via Cable	
	Television and Local Exchange	
	Facilities	6-119
§ 6.09	Cable Modem Service.	6-122
O	[1] Supreme Court Supports the FCC's	
	Information Service Classification for	
	Cable Modem Internet Access	6-141
§ 6.10	Cable Delivery of Telephone Service	6-144
=	[1] Voice Over Internet Protocol	
	Regulation	6-149
	[a] CALEA Enforcement	6-154

	[b] Classifying VoIP Services	6-163
	[c] Judicial Classification of VoIP as	
	an Information Service	6-164
[2]	Universal Service and Interconnection	
	Reform	6-168
	[a] Comprehensive Examination of	
	IP-Enabled Services	6-168
	[b] Changes in Universal Service Funding	
	and Intercarrier Compensation	6-170
	[i] Connect America Fund	6-171
	[ii] Intercarrier Compensation	6-175
	[c] Universal Service Lifeline Support	
	Reform	6-176.1
	[d] E-Rate Reform	6-180
	[e] Promoting Broadband Universal	
	Access	6-183
	[f] Broadband Carrier Interconnection	
	Pricing	6-186.1
	[g] Additional Universal Access	
	Financial Support and Improved	
	Broadband Performance	
	Measurement, Mapping	
	and Data Collection	6-186.3
	[h] Technology Neutrality in Broadband	
	Universal Service Subsidy	
	Programs	6-186.6
[3]	VoIP Service Providers Ordered to	
	Contribute to Universal Service Fund	6-186.7
[4]	Eighth Circuit Court of Appeals Affirms	
	FCC Preemption of State VoIP	
	Regulation	6-186.14
[5]	ILECs Prohibited From Refusing to	
	Interconnect with VoIP Providers	
	Using Leased Lines	6-186.15
[6]	Additional VoIP Regulatory	
	Requirements	6-186.18
[7]	Treatment of Customer Proprietary	
	Network Information	6-186.20
	[a] Opt-In Requirements	6-186.23
	[b] Win-Back Limitations	6-186.24
[8]	Consumer Safeguards	6-186.26
[9]	Tougher Rules on Unauthorized Phone	
	Charges	6-186.27
[10]	Transition to Next Generation Network	
	Telephone Service	6-186.29

		[a]	VoIP Provider Access to	
			Telephone Numbers	6-186.36
		[b]	VoIP Operator Access to Telephone	
			Numbers	6-186.38
		[c]	VoIP Intercarrier Compensation	6-186.39
§ 6.11	Broa	adban	d Competition	6-186.42
	[1]	Con	npetition from Incumbent Local	
		E	exchange Carriers	6-186.42
		[a]	Forbearance of ILEC Broadband	
			Service Regulation	6-186.42
		[b]	Additional Forbearance Petitions	6-189
		[c]	FCC Preempts State Regulators	
			From Mandating Naked DSL	6-193
		[d]	Deregulatory Parity Established	
			for DSL	6-195
		[e]	Scope of Title I Ancillary Jurisdiction	
		F.1	Over Broadband Services	6-197
		[f]	Limited Antitrust Safeguards	6-198
		[g]	Rate Caps on Compensation for	
		[6]	Inbound ISP Traffic	6-201
	[2]	Broa	adband Over Power Lines	6-202
	[-]	[a]	Regulatory Classification of BPL	6-204
		[b]	BPL Reconsideration Order	6-204
		[c]	BPL as an Information Service	6-205
		[d]	Litigation Over BPL Rules	6-206
	[3]		ellite Broadband	6-207
	[2]		Low Earth Orbiting Satellite	0 207
		լսյ	Broadband Networks	6-213
	[4]	Bros	adband Access via Broadcast	0-213
	[ד]		elevision Spectrum	6-220
	[5]		work Neutrality	6-222.1
			What Is Net Neutrality?	6-227
		[a]	Divergent FCC Regulatory	0-227
		[Ս]		6-231
		[6]	Approaches	0-231
		[c]		6 222
		[4]	Policy Statement	6-232
		[d]	Comcast Investigation and Sanction	6-237
		F.1		0-237
		[e]	D.C. Circuit Court of Appeals	6 241
		Г£П	First Reversal	6-241
		[f]	The FCC's Second Attempt Fails	(244
		гэ	Judicial Muster	6-244
		[g]	The FCC's 2015 Open Internet	C 2 10
			Order	6-248

xvi		ALI	L ABOUT CABLE AND BROADBAND	
		[h]	The D.C. Circuit Court of Appeals Affirms the FCC on Its	
		[i]	Third Attempt	6-253
			Freedom NPRM	6-256
		[j]	Restoring Internet Freedom Order	6-263
		[k]	State Regulatory Initiatives and	
			the Prospect of Federal	
			Preemption	6-271
		[1]	Restoring Internet Freedom Order	
			on Remand	6-275
	[6]	Stin	nulating Broadband Development	6-277
		[a]	National Broadband Plan and	
			Mission Statement	6-277
		[b]	Research and Outreach in Creating	
			a National Broadband Plan	6-290
		[c]	Stimulating Broadband	
			Development	6-291
			[i] Programs and Research	6-291
			[ii] Rural Broadband	6-294
		[d]	Video Device Innovation	6-296
		[e]	Unlicensed Use of White Spaces	6-299
		[f]	Reallocating Broadcast Spectrum	6-306
			[i] Broadcaster Incentive Auctions	6-307
		[g]	Additional Broadband Spectrum	6-312
		[h]	Limits on FCC Promotion of	
		F.17	Municipal Wi-Fi Networks	6-314.1
		[i]	Partial Preemption of States and	
			Municipalities	6-316
		[j]	Additional Broadband Stimulation	
			Initiatives	6-321
			[i] FCC Efforts to Accelerate the	
			Transition to 5G Wireless	
			and Other Advanced	6.000
			Technologies	6-323
			[ii] Over the Air Reception Device	6.220
			Expansion	6-330
			[iii] Access to Multiple Tenant	(222
			Environments	6-332
			[iv] Limiting State and Local	
			Regulation of Next	
			Generation Wireless	(224
			Transmission Facilities	6-334

CHAPTER 7

Transactional Issues: Cable System Acquisitions

§ 7.01	Introduction	7-2
§ 7.02	Form of the Transaction	7-3
	[1] Basic Options	7-3
	[a] Asset Purchase	7-3
	[b] Stock Purchase	7-4
	[c] Merger	7-5
	[d] In General	7-6
	[2] Taxable or Tax-Free?	7-7
	[3] Special Considerations for Public	7.0
e 7.02	Companies	7-8
§ 7.03	First Steps	7-11
	[1] Due Diligence	7-11
	[2] Letter of Intent; Negotiation of Critical	7 14
	Terms	7-14
0.704	[3] Confidentiality	7-15
§ 7.04	Planning the Schedule: Factors That Affect	7 10
	Timing	7-19
	[1] Regulatory Approvals	7-19
	[a] Transfer of Franchises and FCC	7-20
	Licenses	7-20
	[b] Hart-Scott-Rodino Act	7-22.1
	Compliance	/ - 22.1
		7-24.1
	Ownership Transfers	7-24.1 7-25
	[2] Corporate Approvals	1-23
	[3] Third-Party (Nongovernmental)	7-28
\$ 7.05	Consents	7-28 7-28
§ 7.05	Basics of Sale and Purchase Agreements [1] Acquisition Provisions	7-28 7-28
		7-28 7-28
	[a] Stock	7-28 7-28
	[b] Assets (and Liabilities)	7-28 7-29
		7-29 7-31
	[3] Representations and Warranties	7-31 7-41
		7 -4 1
	[5] Conditions to Closing.[6] Indemnification.	7-43 7-45
	[0] Indefinitioation	1-43
INDEX		T 1