mission said it was permitting Teleprompter Corp. to file amendments to the cable franchise it holds for Mount Vernon, N.Y., to add data concerning the fees charged subscribers for pay-cable service. The service, which offers feature films and other entertainment at a monthly charge, $7, is provided on a channel leased from Teleprompter by Home Box Office Inc. It was implemented Oct. 1 (BROADCASTING, Oct. 1).

Under New York state law, any proposed change in subscriber fees must be submitted for the cable commission's approval as an amendment to the original franchise. The issue was clouded in the Mount Vernon case, however, because the new fee was not designed to cover charges for conventional cable service but rather a new service on the subscription channel. There lay the dispute. The National Association of Theater Owners, which is contesting pay cable on both the state and federal level, had argued that the New York commission has the authority to regulate pay-cable fees and operations. Cable interests, including Teleprompter and HBO, maintained that such authority rests solely with the FCC.

In its ruling the state commission did not clearly state that it is asserting jurisdiction over pay cable. But it strongly indicated that this may be a future course of action, and it put cable operators in the state on notice that any pay service they initiate in the interim could eventually be subject to its regulation.

The commission's action came at the request of NATO, which last month petitioned the agency to withhold action on the Teleprompter amendment until it acts on another NATO motion. The latter, also filed last month, contended that the commission should ban the common franchising of pay and conventional cable operations to the same interest within New York. Subsequently, Teleprompter notified the commission that it was withdrawing its amendment in the belief that only the FCC has authority to rule on pay-cable fees. The state commission, however, obtained an order from the New York Supreme Court banning Teleprompter from imposing any pay-cable fees in Mount Vernon until the commission ruled on the amendment.

In the long run, however, the commission had no choice but to approve the Teleprompter amendment. In its order, the commission noted that state law requires that it approve all franchise adjustments unless it can be shown that the new terms conflict with existing law—a determination it said it could not make in this case. But in giving Teleprompter a green light, the commission stated that it recognizes "the possibility that we could eventually adopt rules along the lines suggested by NATO" and that such rules "could justify a refusal" to approve the Teleprompter amendment. It added that the issues raised by NATO "demand our most careful and thorough attention" and that final disposition of the matter "may well require a substantial period of time." Accordingly, while it permitted Teleprompter to begin charging for the Mount Vernon pay service, it advised the company that the operation will be "fully subject" to any new rules it might impose. It also ruled that Teleprompter may impose no retroactive charge on Mount Vernon subscribers for services they have already received. (Teleprompter and HBO had previously agreed not to charge for the first month's service on the pay channel.)

A NATO spokesman last week expressed pleasure with the ruling and said the association does not intend to press the Mount Vernon case any further. "NATO has gotten what it intended to get," he said. "We feel that the decision, while letting them go ahead, clearly indicates that if CATV operators in New York proceed [with pay service] without going to the commission first, they do so at their own risk."

The NATO spokesman added that the association will vigorously press its general rulemaking case in New York. The state commission has given cable operators until Nov. 15 to file oppositions.

Talk about everybody wanting into the act...

Invitation to pay-cable argument gluts FCC with acceptances

More than 100 broadcasting, cable, pay-TV and program producers and distributors notified the FCC last week that they want to participate in the commission's oral argument and panel discussion next month on the pay-cable issue. The commission has set Nov. 5 and 6 for oral argument and Nov. 7 for the panel (BROADCASTING, Oct. 15).

The list incudes ABC, CBS, NBC and the television-affiliate associations of all three networks. The National Association of Broadcasters and the National Cable Television Association asked to enter the ring.

Also: The Association of Maximum Services Telecasters, Corinthian Broadcasting Corp., WWLP-TV Springfield, Mass., KPRC-TV Houston, Multimedia Inc., the Joint Council on Educational Telecommunications, Viacom International Inc., Rand Corp., Theatrevision Inc., Cablecom-General Inc., Trans World Communications (division of Columbia Pictures Industries), Warner Cable Corp. and Warner Cable of Pottsville (Pa.).

Also the New York State Cable Television Association, Teleglobe Pay-TV System Inc., Time Inc., the U.S. Conference of Mayors, Digital Communications Inc., the Illinois Agricultural Association and, as a group, the licensees of 20 television stations.

Also notifying the commission of their plans to appear were the 72 members of the Association of Motion Picture Television Producers, 10 major production-distribution interests including the Motion Picture Association of America, Allied Artists, Avco Embassy Pictures, Columbia Pictures, MCA, MGM, Paramount, Twentieth Century-Fox United Artists and Warner Bros.

In a related matter, major broadcast interests, including the NAB, have asked the commission to release a staff report on options the FCC may take in pay-cable policy-making (BROADCASTING, Oct. 1.). NAB, AMST, ABC and CBS said they needed the staff report to prepare for the pay-cable arguments.

CLC will rule whether cable is or isn't a public utility free of price ceilings

The Cost of Living Council plans to issue a ruling soon on whether it considers cable television a public utility and thus exempt from Phase IV price controls.

That news came to light in a letter from Ellen S. Agress of the Citizens Communications Center to John T. Dunlop, director of the CLC. In the letter, Ms. Agress referred to the fact that a Citizens client, the Alabama Civil Liberties Union, had challenged the CLC's determination that CATV systems serving three Alabama cities were public utilities and exempt from price controls. In making inquiries for the CLC, Ms. Agress said, "I learned that you were on the verge of reaching a national ruling on the status of CATV as a public utility vis-a-vis Phase IV."

A CLC spokesman last week confirmed that the agency has the CATV issue under consideration and said it would issue a ruling in the near future.

In her letter, Ms. Agress went on to urge the CLC to solicit public comment on the issues involved before it issues a ruling on cable. "A decision by CLC to consider cable franchises as public utilities," she said, runs counter to the FCC's national policy of delegating regulatory authority over cable television to the states, and may lead to inconsistent treatment of CATV by different agencies of the federal government.

She also pointed out that the current CLC definition of a public utility "is so broad and so vague that conceivably any firm which provides the public with a service of 'public consequence' can qualify."

Birmingham council has second thoughts

It talks now of grant to Warner after all but picking Teleprompter

A tentative grant of a Birmingham, Ala., cable franchise to a Teleprompter-controlled applicant has been withdrawn and is expected to be given to a rival applicant controlled by Warner Cable Corp. A 110,000-subscriber potential is at stake.

The Birmingham city council changed its mind after Teleprompter announced a retrenchment in its national construction program and the Securities and Exchange Commission suspended trading in Teleprompter stock. Teleprompter owned 80% of the Birmingham applicant. The other 20% was held by a local group, Telecable of Alabama. The council also