

FCC UPHELD IN CATV CASE

Appeals court says commission can protect TV stations from antenna system inroads

A federal court has upheld the FCC's right to protect local TV stations from the inroads of community antenna systems—through its licensing powers over common carrier microwave relay licenses.

In a unanimous, three-judge decision last week, the U.S. Court of Appeals for the District of Columbia affirmed the commission's refusal to grant additional facilities to Carter Mountain Transmission Corp.

Carter Mountain brings TV signals from Denver, Salt Lake City and Billings, Mont., to a CATV system serving north central Wyoming. This is the same area served by KWRB-TV Riverton-Lander-Thermopolis-Worland, Wyo., which objected to the application. The FCC, after a hearing, upheld KWRB-TV's contention that the additional signals into its area would force it out of business.

The court's ruling is expected to strengthen the FCC's hand in its current negotiation with community antenna spokesmen on the proper form legislation should take giving the com-

mission power to directly regulate CATV systems. It also affects about a dozen microwave applications which have been held in abeyance pending the outcome of the Carter Mountain litigation.

The decision, written by Circuit Judge George T. Washington, held that:

■ The FCC has every right to consider the impact of CATV on a local TV station, even though the application relates to a common carrier facility.

"It [the FCC] cannot let its decision in the radio carrier field interfere with its responsibilities in the television broadcasting field," Judge Washington wrote. He also noted that under Sec. 307 (b) requiring a fair and equitable distribution of frequencies among the states, the commission may weigh the effect on the community or communities to be served in a comparative hearing for the same facilities; therefore, he added: "It necessarily follows that in determining whether the authorization requested by appellant [Carter Mountain] would be in the public interest, the commission was entitled—if indeed it was not ob-

liged—to consider the use to which the facilities and frequencies requested were to be put, and to weigh that use as against other legally relevant factors, including the effect on existing local stations."

■ The commission's action does not constitute an unlawful extension of its authority to regulate CATV systems. The FCC does not now have authority over CATV systems, but has asked Congress for this power.

In denying Carter Mountain's application, the FCC said it would entertain a refile provided the CATV system would agree to carry the local station on its lines and not to duplicate its programs from another station.

The court said: "The commission deemed adequate protection of the local station to be in the public interest, and instead of denying appellant's application outright, as it might have done, it offered the appellant the opportunity to secure what it was seeking if it protected the public interest."

■ The FCC has sufficient grounds to decide that the increased facility for Carter Mountain might put KWRB-TV out of business. In developing this point, the court cited not only the economic status of KWRB-TV, but also its overall programming, local operations and programming for its area, its arrangements with the three networks and its public service record.

"The closing of the station would mean that no local programs of this type would be available to residents of at least half of the area served," the court said. It pointed out that more than half of the 74,000 people in the region live in rural areas and since it is uneconomical for a CATV system to serve rural areas they would lose their entire TV service. Moreover, it added, the 25,000 people in the urban areas also would be deprived of TV service unless they subscribed and paid for it via the CATV systems.

Joining Judge Washington in the decision were Chief Judge David L. Bazelon and Judge Wilbur K. Miller.

Henry against ceiling on station sale prices

FCC Chairman-designate E. William Henry said in a television interview yesterday (May 26) that he opposes any ruling which would limit the sale prices of stations. The question was raised by Representative Emanuel Celler (D-N.Y.), chairman of the House Judiciary Committee, who interviewed Commissioner Henry on WOR-TV New York's television program, *Congressional Conference*.

Representative Celler pointed out that broadcasters who pay high prices for television and radio stations

Misidentification may cost WHAS-TV

WHAS-TV Louisville faces a \$1,000 fine for failing to announce that the sponsor of a half-hour documentary it broadcast April 29 on former Governor A. B. (Happy) Chandler was acting for a Chandler opponent in Kentucky's May 28 Democratic gubernatorial primary election (AT DEADLINE, May 6).

The station had announced that the documentary—which constituted an unflattering review of the former governor's public life—was sponsored by the "Committee for Good Government."

But, the commission said in a letter to WHAS-TV last week, the station "had reason to inquire . . . whether the true sponsor was in fact Edward T. Breathitt," one of Mr. Chandler's primary opponents.

The commission said the application for time "and the subsequent contracts executed by the advertising agency for the 'Committee for Good Government' indicated that the committee was in fact acting on behalf of Mr. Breathitt."

The commission, which acted on a complaint from Chandler supporters, said this constitutes an apparent

violation of the agency's rules requiring sponsorship identification.

"Furthermore," the agency added, it regards the failure "to make an appropriate sponsorship identification [as] extremely serious . . . in view of the importance of political broadcasts to our democratic system of government."

The commission said it has determined that the station has incurred "an apparent liability of \$1,000 for willfully failing to observe the sponsorship-identification requirements" of the Communications Act and the FCC rules. The proposed fine is the stiffest penalty the agency can levy for a single violation. WHAS-TV was given 30 days in which to give its reasons why it shouldn't be held liable or why the fine should be smaller.

Several other stations in Kentucky and nearby states reportedly had also planned to carry the film. However, after receiving word from the commission of the complaint that had been lodged against the Louisville station, they either dropped the program or identified it as being sponsored by Breathitt supporters.