

appropriate cases was reasonable.

However, it said that the commission had erred in not paying attention to Southwest Pennsylvania's claim that WUC-TV Pittsburgh, whose request for a cease and desist order against the system led to the court case, had not sought the same kind of protection against other systems duplicating its network programming.

The commission had held that the issue of uniformity is irrelevant to the decision regarding issuance of a cease and desist order. It said the question of alleged discrimination in implementing the rule is relevant only when a system presents evidence of house-to-house competition with another system; Southwest Pennsylvania presented evidence only of competition for franchises.

"We believe the commission has taken an improperly narrow view of the type of injury which may result to a cable system subjected to a nonduplication demand, which is not also made on neighboring systems," the court said. Accordingly, it sent the case back to the commission for consideration of the issue of uneven enforcement of the nonduplication rule.

However, the court said that the "bare fact of uneven enforcement" would not be enough to assure Southwest Pennsylvania the relief it seeks. There must also be a showing that the company is injured as a result of WUC-TV's failure to make the same demand on competing systems.

The opinion was written by Judge George E. MacKinnon and joined in by Judges Malcolm Wilkey and William J. Jameson, a senior U.S. district judge for the district of Montana, who was sitting by designation.

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## FCC on course for adopting same-game rule for importation of distant sports

**Staff is instructed to draft order banning cable carriage in 35-mile zone of blacked-out home games**

The FCC made its decision last week on the controversial question of the limitations to be placed on cable television's freedom to import sports events from distant stations. But the issue is not resolved as far as professional sports interests are concerned; they will seek help from Congress in shaping the commission's policy.

The commission, as expected (BROADCASTING, May 26) instructed its staff to draft a so-called "same-game" rule. If a team is playing at home and the game is denied the local television station, an area cable television system will not be permitted to import the game into a 35-mile zone around the station's city.

But that is the only restriction. And

while officials of the National Cable Television Association and the National Association of Broadcasters indicated they were not entirely displeased—NCTA would have preferred no rule but regards the commission action as "reasonable"; NAB would have preferred a broader rule covering any game in the same sport but is "pleased" with what the commission did—it is the sports interests that will carry on the fight.

James F. Fitzpatrick, an attorney who has represented the Baseball Commissioner's office in the FCC proceeding, saw the FCC action as leading to a "dilution" of the value of television sports packages. As a result, he said, it will become "difficult for baseball and other sports" to provide the public with as much "free over-the air televised sports they have in the past." Donald Zeifang, NAB vice president for government relations, made the same point. He foresaw the commission rule leading to the further weakening of already weak teams and, ultimately, to the telecasting of fewer games.

Baseball urged the commission to create a 75-mile zone around each major-league city into which cable could not import distant signals of a game competing with the home team's telecasts without consent. It also wanted a 20-mile zone of protection around minor league cities when the minor league team is playing at home. And it suggested a 35-mile zone of protection around television stations that are carrying a team's games as part of the team's television network (BROADCASTING, April 21).

Considering the gap between what baseball feels it and other professional sports used and what the commission intends to do, Mr. Fitzpatrick said, "We'll go back to Congress." He said the copyright hearings now being held by the House Judiciary Committee will provide one forum. But he also indicated members of the Senate and House Commerce Committees and the Senate Judiciary Committee will be contacted also.

Sports interests were not successful in Congress last year. Senator Hugh Scott (R-Pa.) proposed an amendment to the copyright bill then pending in the Senate that would have given sports interests much of what they want; but the amendment was rejected by the Judiciary Committee. And an amendment proposed by Senator Philip Hart (D-Mich.) that would have required the commission to fashion its distant-signal sports policy with a view to meeting the needs of sports interests as well as broadcasters and cable operators was killed on the floor by a vote of 36 to 34 (BROADCASTING, Sept. 16, 1974.)

The commission's instructions to the staff on the distant-signal sports rulemaking climaxes a study begun three years ago. At that time, the commission had proposed a more protective rule: It would have banned a system in the grade B contour of a station in a professional sports team's city from carrying a game in the same sport from a distant station when the local team is playing at home.

The rule was proposed as a means of

carrying out congressional intent as expressed in the antitrust law that permits professional sports leagues to agree to black out television coverage of games in order to protect the box office of teams playing at home—a right since narrowed to eliminate sold-out games.

However, the commission has cooled to the idea of affording box-office protection. And although there was some discussion at the meeting last week about the need to protect the television sports package, the emphasis of the rule to be drafted is on equalizing the ability of television stations and cable systems to carry home games.

There was opposition within the commission even to the same-game rule. Commissioner Glen O. Robinson, for instance, made it clear he will vote against it on the ground that the commission lacks jurisdiction.

The remaining four commissioners present last week—Chairman Richard E. Wiley and Commissioners Robert E. Lee, Charlotte Reid and Abbott Washburn—indicated they favored the same-game rule. The two absent commissioners, Benjamin L. Hooks and James H. Quello, will probably support it also, although Mr. Quello is said to have favored protection out to a station's grade B contour.

The commission, in a public notice announcing its instructions to the staff, said the rule "is intended to maintain the present level of sports telecasts by preserving the right of sports clubs and their leagues to impose local television blackouts of their home games." The notice also said the rule is aimed primarily at professional and college games but will also apply to other televised sports events.

Adoption of the rule will not interfere with cable service provided since the issuance of the rulemaking. The commission said the rule will not apply to signals being carried by cable systems before March 31, 1972. The rule, a final draft of which is expected to be ready for commission consideration this week, will become effective 30 days after its publication in the *Federal Register*.

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## Ford tries out agency reform on Hill leaders

**But his idea of less regulation crosses Democrat's desire for more**

President Ford and 24 Democratic and Republican members of the House and Senate met for two hours last Wednesday morning on a subject the President has made a matter of continuing concern—regulatory agency reform. And after the two-hour meeting, the two sides agreed the need for reform was real and urgent. But beyond that, it was not clear whether or to what extent the two sides agreed regulatory reform could be effected.

For instance, the Senate has passed a bill calling for a consumer protection