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TOP OF THE WEEK

FCC now all but out of cable business

Commission repeals rules on syndicated exclusivity and distant-signal importation; Malrite immediately goes to court while NAB and MPAA plan legal counterattack; Hill may get into the act

The FCC, in the name of program diversity, last week repealed two of its last rules that have limited cable television in its use of broadcast signals.

And before the ink on the order was dry, the decision faced appeal. Malrite Broadcasting, which owns WUHF(TV) Rochester, N.Y., an independent UHF station, and WCTI(TV) New Bern, N.C., an ABC-affiliated VHF, as well as a radio group, filed a notice of appeal in the Second Circuit Court of Appeals in New York. Malrite said it would argue that repeal of the rules endangers young UHF independents.

Malrite's appeal will not stand alone. The National Association of Broadcasters, the Motion Picture Association of America and the Association of Independent Television Stations have all vowed to do whatever they can to prevent the promulgation of last week's decision.

And repercussions from a House Judiciary subcommittee are expected. The subcommittee's chairman, Robert Kastenmeier (D-Wis.), had asked FCC Chairman Charles Ferris last March to delay action until new copyright legislation could be considered. Ferris gave him a firm no (BROADCASTING, March 31). Representative Lionel Van Deerlin (D-Calif.), chairman of the House Communications Subcommittee, last week called the ruling a "big break for cable." But he explained that "this will bring closer the time when cable will face competition with broadcasters as programers rather than just carriers." Van Deerlin said the decision "mandates further action by the Judiciary Committee on copyright legislation" and indicated that he is sure his committee will be "pressed for early FCC oversight hearings"—normally scheduled for February.

In a 4-to-3 vote—Commissioners Robert E. Lee, James Quello and Abbott Washburn dissenting—the FCC eliminated all limits on the number of broadcast signals a cable system may carry and removed the protection formerly granted local television stations against duplication of the syndicated programing to which they hold exhibition rights.

The four-member majority, Chairman Ferris, Joseph Fogarty, Tyrone Brown and Anne Jones, concluded that elimination of the rules would result in benefits to viewers at no significant harm to broadcasters.

Broadcasters, however, had vigorously argued that they faced an erosion of audience and a loss of program values if cables were allowed to carry all the broadcast signals they desired. Program distributors had asserted that the marketplace would be dislocated by the removal of syndicated-exclusivity rules.

During the commission's discussion before voting last Tuesday (July 22), Commissioner Brown explained: "There are grounds in the argument that cable systems pay less for programing than those who buy it for over-the-air broadcast. In my mind, there's no doubt that cable is getting a break. The question we have to deal with as a matter of communications policy is whether this has an impact on broadcasting, not profits but its ability to provide service around the country. The report makes a devastating case that that kind of impact is not being made, and that's as far as we need inquire, as a matter of communications policy."

The report to which he referred was one prepared by the FCC Cable Television Bureau in support of its recommendation to eliminate the rules. The bureau concluded that a number of studies conducted over a four-year period beginning in 1972, when the rules were first adopted, showed little audience diversion from broadcasting to cable and only some loss of broadcast revenue in three of 170 markets—at no loss of broadcast service. The studies were attacked by broadcast groups as biased in favor of cable.

The FCC also concluded that due to several factors, among them increasing population and rising advertising rates, net profits of TV stations have continued to increase despite large increases in the number of cable TV subscribers.

Another decisive factor in the commission's decision was a poll, conducted by the National Cable Television Association, concluding that of all cable systems in the top 100 markets that were subject to the syndicated-exclusivity rule, only 27% had been asked by local broadcasters to provide syndicated protection.

Chairman Ferris said: "It is clear that removing the 'protection' of exclusivity arrangements will not 'destroy' the supply of program materials. This regulatory protection is in fact rarely requested by local broadcasters and would, in any event, provide a small scope of security to a relatively few limited number of programs even if . . . applied.

"The program supply market can now develop undistorted by this artificial regulatory scheme. It will adjust to a new reality where advertising rates will reflect both the distant signal as well as the local viewer, and the value of syndicated rights will account for viewers who can watch programs at times that are more convenient to them."

They did it. The commission, on the dais on the day of the vote (from the left): Brown, Washburn, Lee, Ferris, Quello, Fogarty and Jones.

Randy Nichols, chief of the FCC's Cable Bureau, took issue with the broadcasters' unfair-competition argument. He said that cable had already been brought into the competitive marketplace when