

[Section] 605 and its communications are protected by that section." This part of the appeals judge's order overturned a ruling by Judge Robert Demascio of Detroit, who held that Section 605's prohibition against unauthorized reception of over-the-air signals did not apply to STV service.

■ "Section 605 was intended to protect persons from having their communications received by those not entitled to receive them," and "[p]rivate causes of action are consistent with the intent to prevent unauthorized persons from receiving these signals." That overturned a ruling by Judge Lawrence T. Lydick of Los Angeles, who ruled that STV operators could not seek private causes of action under the disputed section.

In light of those two reversals, Judge Kennedy granted an injunction barring Westbrook and Moser from:

"(a) Intercepting, receiving, divulging or using ... communications transmitted via the encoded ON-TV signal carried by WXON-TV, channel 20 ... without authorization. ...

"(b) Assisting, aiding and abetting, or conspiring with any person to intercept, receive, divulge, or use [ON-TV's] communications without authorization. ...

"(c) Manufacturing or assembling, in whole or in part, purchasing, using, installing, selling, trading, giving, or otherwise transferring components, plans or devices capable of or intended, designed or represented to be capable of intercepting or decoding [ON-TV's] communications. ...

"(d) Manufacturing, publishing, adver-

tising, disseminating, marketing, purchasing, selling, trading, giving or otherwise transferring plans, specifications, schematics, diagrams, or instructions for constructing [decoders].

"(e) Destroying, altering, concealing, transferring or tampering with any records or writings of any sort referring to, relating to, mentioning or memorializing any acts or transactions ... including, without limitation, lists of actual or potential manufacturers, suppliers, purchasers or transferees of components, plans or devices; and,

"(f) Disposing of, concealing or removing from this jurisdiction the proceeds of any sales of its decoding devices and kits or plans or parts for its decoding devices."

Justice backs up its action against Premiere with talk

It files with court memos sent among producers as they formulated pay TV joint venture

"Stripped to its essentials, Premiere is nothing more than a price-fixing arrangement and a group boycott, both per se violations of Section I of the Sherman Act."

That's one of the claims made by the Justice Department in asking the United States District Court for the Southern District of New York to grant a preliminary injunction preventing the four motion picture producers participating in the Premiere joint venture from supplying pro-

duct to it, or, along with co-defendant Getty Oil, from taking further steps "to effectuate the implementation of Premiere." Justice is seeking the injunction pending the adjudication of its allegation that the defendants entered into an unlawful contract and are in "a combination and conspiracy in unreasonable restraint of trade" (BROADCASTING, Aug. 11).

Cited in the Justice memorandum in support of the motion for the injunction are producers' internal memoranda that, Justice said, prove "the driving purpose behind the formation of Premiere was to raise prices and control supply."

Richard Frank, Paramount's pay TV operations chief, was quoted as saying in a December 1978 memo: "The desire to enter the pay television area with a program service of our own or in combination with Universal comes from our frustration along with that of Universal's of what we feel is the disproportionate amount of money being retained by the cable operators and the programming companies, i.e., Home Box Office and Showtime."

A 1976 Paramount memo cited by Justice, from Alan Fields, then director of market development, to Paramount head Barry Diller, said: "Our goals are basically the same. To erode HBO's ever increasing leverage and eliminate outside middlemen from our business. We know from the television business what can happen and don't want it to happen again."

A third Paramount memo contained in the affidavit filed by Justice Department lawyer Seymour Dussman, was from Ron Nelson, director of distribution financing, to Frank on the subject, "pay TV joint venture" dated Feb. 22, 1980. It started by noting that major MSO's are planning to enter the pay programming production field. "Should the MSO's succeed and establish a foothold in controlling their own programming distribution channel ... studios may not participate fully in the anticipated explosive growth of the pay market," Nelson said.

He went on to say: "without control of the distribution mode, our production volume will likely be dependent upon an order from the sources controlling the channel. The frustrating aspect of this situation is that control of the distribution channel is not beyond the studio's reach" as future films "will likely continue to be the driving force behind this medium."

Nelson also suggested a joint venture "would have ability to force marginal productions into the pay TV distribution channel." He concluded by suggesting "that acquisition of all or part of Showtime may be the vehicle that gets our service into the market in the quickest and most cost-effective manner."

Affidavits were also filed from top executives of the three principal competitors in the pay cable field: Nick Nicholas, chairman of HBO, Jules Haimovitz, senior vice president, programming and operations, of Showtime and John Schneider, president of Warner-Amex. The three set forth their views on the importance of feature film product to their operations and the impact of Premiere on their businesses.

The government requested on Aug. 25

Washington Watch

Very interested. National Black Media Coalition has asked FCC for "emergency, immediate relief" to be granted to "black Americans and other minorities to insure the accessibility" of frequency assignments at issue in FCC's 9 khz proceeding. At July 31 meeting, FCC issued second notice of inquiry on proceeding and asked for "showings of interest" in allocations FCC proposed on projected list of AM station needs through 1987 that U.S. must submit to International Telecommunication Union (BROADCASTING, Aug. 4). NBMC asked FCC to postpone Oct. 1 deadline to Dec. 15, thereby enabling minorities to complete legal work required. It also urged FCC to invite minority organizations to participate in Region 2 Advisory Committee, and to create within that committee Task Force on Minority Ownership to "coordinate industry efforts to secure substantial minority ownership from 9 khz proceeding."

□ **Naturally.** National Cable Television Association has taken FCC's side in court suit challenging commission's decision to repeal distant signal and syndicated exclusivity rules, last remaining regulations of cable industry (BROADCASTING, July 28). Suit, which was brought by Malrite Broadcasting was filed in U.S. Court of Appeals in New York on July 23. NCTA has asked court to allow it to intervene on FCC's behalf. According to NCTA President Thomas Wheeler, "NCTA members will be substantially and materially affected by any determination by the court in this review proceeding."

□ **Give us a chance.** Workers World Party has asked FCC to beef up its equal time rules by requiring broadcasters to give "continual and substantial broadcast time to all qualified candidates. ... irregardless of the program format" and furthermore, "in order to equalize the ability of all candidates to reach the voters, special preference must be given to those candidates who can least afford to purchase broadcast time." WWP's candidates for presidential election are Deirdre Griswold (President) and Larry Holmes (Vice President). Group claims that media give preferential treatment to big business by airing view of only those candidates who can afford to buy time thereby slighting third party candidates who do not have expensive campaigns.