approved by OMB and won't go into effect for several months.

The commission also made several revisions in the way it will process broadcast applications. Cut-off lists will no longer be published in the *Federal Register*, saving $20,000 in publication costs annually. It was pointed out that the commission allocates $1.1 million a year for publishing items in the *Federal Register*, about half of which is used by the Broadcast Bureau. Shiben said his staff will review all of those items generated by his bureau, cutting back where possible.

Also to be eliminated are outstanding ascertainment issues in hearing that do not involve misrepresentation.

The commission is also getting tough with applicants who fail to properly address engineering sections in applications. Applications with "clearly deficient" engineering sections will be returned.

Shiben explained the tougher stand this way: "In many cases we end up doing all the engineering for the applicant ... We are not the consulting engineer and I don't think the commission staff should spend 90% of its time on 1% of the applications." By returning those applications that are clearly deficient, Shiben said "we can expedite our process considerably."

In other action, the commission:

- Denied petitions for reconsideration in the low-power TV proceeding by Neighborhood TV Co. and a group of broadcast licensees filing LPTV applications in their own markets. Neighborhood wanted the interim 15 LPTV station limit waived in its case so that it could implement its planned nationwide translator network expeditiously. The broadcast licensees complained that by shelving their applications until the adoption of final rules, the commission was giving other applicants an unfair competitive advantage. They asked that their applications either receive final action during the pendancy of the rulemaking or that no grants be made in markets where they filed applications.
- Granted WIOD(AM) Miami authority to increase its power from 5 kw to 10 kw to overcome interference from Cuban stations operating outside the North American Regional Broadcasting Agreement (NARBA). The commission indicated that the increase in power will not cause prohibited interference to any domestic or properly coordinated foreign station. Similar applications are pending for two other Miami stations: WINZ(AM) and WQBA(AM).
- Adopted a further notice of inquiry in docket 78-369 dealing with radio frequency interference to television receivers and put out for comment a staff report that addresses some of the problems.
- Approved the allocation of $20,000 for a research project on long-range spectrum planning. The project is a joint effort between the commission and the National Telecommunications and Information Administration, which is putting up $50,000 to fund it.
- Adopted a notice of proposed rulemaking to amend the rules "to eliminate radio interference which jeopardizes safety of life and protection of property." That action stemmed from the interference caused by new types of electronic newsgathering equipment to the radio communications of the space shuttle Columbia during its re-entry and landing at Edward's Air Force Base, Calif., two months ago. Field Operations Bureau Chief James McKinney made a point of noting that the networks were highly cooperative in FOB's efforts to remedy the problem.

Appeals court upholds FCC repeal of distant-signal, exclusivity rules

Broadcasters and programers see 'Malrite' decision as defeat, must decide whether to appeal; cable views it as victory

Broadcasters, motion picture producers and sports interests concerned about the effects of unregulated cable television operations on their businesses last week suffered a defeat in the U.S. Court of Appeals in New York, where they had sought relief. A three-judge panel unanimously affirmed the FCC order last year repealing the distant-signal and syndicated exclusivity rules. The petitioner (Malrite TV of New York) and its supporters thus were faced with the prospect of further litigation or placing all their hope in Congress.

Judge Jon O. Newman, in the opinion he wrote for the court, rejected the petitioners' arguments that the legislative scheme prohibits repeal of the rules but will accommodate a retransmission consent requirement. He also said the commission was reasonable in overriding petitioners' contentions that they would suffer severe economic harm if the rules were repealed.

Barring further action by the parties to stay the order and seek rehearing by the appeals court or Supreme Court review, the rules adopted by the commission in 1972 to serve as what the court described as "proxies" for the copyright liability the courts had refused to impose, become effective.

The distant-signal rule limits, according to market size, the number of signals from distant stations that cable systems may import. The syndicated exclusivity rule authorizes television stations with exclusive rights to a program to demand that a local cable system delete that program from its distant signals. Copyright holders are also protected and can demand deletion of their programs from a system's service.

The sharpest reaction to the court's decision last week came from Jack Valenti, president of the Motion Picture Association of America. He called the decision on the syndicated exclusivity rule "a disaster for those who invest in, create and distribute film and television programs." And he called the FCC decision "a bizarre contradiction of property rights," under which persons may own property but not license it exclusively to anyone "for even a limited period of time."

The parties opposing the commission action and their lawyers had not yet decided last week whether to appeal the court's decision. But National Association of Broadcasters President Vincent Wasilewski said that, regardless of whether an appeal is taken, the decision underscores the need for congressional action. Under the 1976 Copyright Act, cable systems are given a compulsory license which permits them to retransmit programs without negotiating a payment with copyright owners. The fees are contained in a schedule which was adopted by Congress—but which, because of a provision of the law, will be adjusted by the Copyright Royalty Tribunal if the appeals court decision stands.

The Copyright Act "should be amended to reflect the realities of today's marketplace," Wasilewski said. "If a local television station pays for a program, it should have the exclusive right to air that program in its home market. Allowing a cable system to import that same program at virtually no cost is wrong." He noted that Senate and House committees have begun a review of the Copyright Act and expressed the broadcasting industry's confidence "that the present giveaway to cable will be rectified." He said cable is "a multibillion-dollar industry and does not need continued federal protection."

For its part, the National Cable Television Association regards the court's decision with pleasure, and appears to see in it ammunition for the congressional battle over copyright. "We are pleased that the court, having reviewed the extensive economic record developed by the FCC, has upheld" the commission's decision, NCTA President Thomas E. Wheeler said. "The significance of this action should not be lost on the Congress, where the same old arguments which proved inconclusive to the FCC and the court are being trotted out once again as justification for protecting program producers and broadcasters from competition."

The House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice, which has taken the lead in the matter, is considering a bill that would retain the compulsory license but make it easier for the Copyright Royalty Tribunal to increase fees.

What's more, the bill would also authorize the CRT to establish a syndicated exclusivity rule to replace the one the commission has repealed.

The 1976 Copyright Act was the major factor around which arguments in the appeals court case ranged. For instance, those seeking reversal of the commission's action said the act's compulsory licensing scheme was premised on maintenance of the then-existing regulatory framework.

Not so, said the court. Congress "recognized the legitimacy within the statutory