plan of FCC modifications of that regulatory structure" Newman wrote. Indeed, he noted that Congress authorized the CRT to adjust the royalty fees "if the FCC altered either the distant-signal or syndicated exclusivity rules."

The court was similarly inhospitable to the argument that the act permits the commission to adopt a rule requiring cable systems to obtain permission from distant stations before importing their programs—a proposal originally advanced by the then-head of the National Telecommunications and Information Administration, Henry Geller. The commission is not free to adopt rules inconsistent with the basic arrangement of new legislation, Newman said. And the retransmission consents, he added, "would undermine compulsory licensing because they would function no differently from full copyright liability, which Congress expressly rejected."

The petitioners' argument that the commission's decision was arbitrary and capricious was not persuasive, either. The commission had amassed a considerable amount of material—including econometric studies and case studies—in arriving at its decision. But broadcasters said the commission's use of the material was biased and irrational, and that the conclusion that broadcasters would not be injured from cable deregulation was unfounded.

The court, however, found that the commission had "specifically responded to petitioners' factual and theoretical assertions in the report and order, articulating clear reasons when it rejected, or did not fully use, the economic predictions in industry studies due to erroneous assumptions or modeling flaws."

Nor did the court accept the argument that the commission's action would adversely affect sports gate receipts and ultimately lead to a decrease in sports programing, the argument made by the commissioner of baseball, the National Basketball Association, the National Hockey League and the National Football League. Newman said the leagues produced no evidence to support their concern. He also pointed out that the commission had noted such "variables" as weather and the caliber of the contending teams could influence gate attendance. "It was not arbitrary for the FCC to conclude that sports programing requires no special protection after the repeal of the distant-signal rules."

The court also affirmed the commission's decision on the basis of what could be called the bottom line—the commission's aim in promoting diversity of programing.

"Free television ... limits program diversity by its concentration on mass audience shows," Newman wrote. "In shifting its policy toward a more favorable regulatory climate for the cable industry, the FCC has chosen a balance of television services that should increase program diversity, a valid FCC regulatory goal. While there will undoubtedly be more of the same type of mass audience programing now populating the national networks on cable channels as well, the unlimited number of cable channels holds out the best possibility for special interest programing."

Besides the NAB, the MPAA, the sports leagues and a number of individual stations, the parties challenging the commission action included ABC, CBS and NBC and the Association of Independent Television Stations Inc. Joining Newman in the opinion were Circuit Judge Amalya L. Kearse and Judge Charles M. Metzner of the U.S. District Court for the Southern District of New York, who sat by designation.

Senate marks some progress on S. 898

AT&T Chairman Brown hints that transmission but not origination of information may be acceptable to Bell System, as Senate looks for ways to make bill agreeable

The Senate Commerce Committee may have found the beginning of at least one compromise last week in the heated debate over its legislation to allow AT&T to compete in unregulated services including video. Indications came when Charles Brown, chairman of AT&T, said his company might find acceptable an amendment to the bill to allow it to transmit and manipulate but not originate information.

This could end some of the newspaper and cable TV industry's opposition to the bill, but it will not quiet its many other opponents, among them data processing and smaller telephone companies. Present and potential competitors of AT&T who testified last Monday and Tuesday are divided in their views, some calling for relatively minor changes in the bill, while others called for a complete overhaul.

In addition to AT&T and its competitors, former Attorney General Griffin Bell, now in private practice, took the witness stand to assure the committee it is justified in attempting to legislate a solution to the problem of AT&T, in spite of objections from the Justice Department, which has proceeded for the last eight years in an antitrust suit against AT&T. "The issues are too large to be left to the prevailing views of lawyers involved in the case," said Bell. "Congress fashioned the Sherman Antitrust Act so Congress should be able to change it. The Justice Department has no pre-emptive right to decide here."

Bell urged the committee to meet with the Justice Department and obtain its views on what should be done to allow AT&T to compete in the telecommunications marketplace. Bell said he has no problem with Justice Department proposals that AT&T divest itself of its equipment manufacturing arm, Western Electric, but that he doesn't understand the need to spin off Bell Labs or AT&T Long Lines.

Raising the issue of information origination, Committee Chairman Bob Packwood (R-Ore.) asked Brown if AT&T would not be put at a competitive disadvantage if prohibited from originating any information it does not already own, such as the Yellow Pages. "We can defend ourselves transmitting information," said Brown, who also said it is "impossible to legislate a barrier separating communication and information handling."

Brown said AT&T is not interested in originating news or in the classified ad business, but he agreed with Packwood that there remains disagreement about his company's plans to upgrade its Yellow Pages. Newspaper interests say upgraded Yellow Pages would compete with classified advertising. Packwood noted the committee might "want to negotiate" on AT&T's plans for the Yellow Pages.

As did virtually every other phone company testifying last week, Brown said local telephone rates are bound to increase with or without the passage of S. 898. "Today's local rates are not economically rational," he said.

Although William McGowan, chairman, MCI Communications Corp., maintained that local rates are not subsidized by long distance, and that AT&T's statements to that effect are merely "scare tactics" to prevent mandated divestiture of its long distance services, all of the other phone companies testifying disagreed.

Packwood and Goldwater listen to testimony.