Top of the Week

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FCC issues anticipated rules on pay cable; major cable companies seek court appeal

FCC on Thursday completed work on its controversial package of pay cable and over-air pay television rules – and on Friday group of eight cable industry companies filed notice of appeal in U.S. Court of Appeals in Washington. Terrence A. Elkes, of Viacom, one of companies in suit, said group decided to go to court rather than seek reconsideration because it regards further appeal to commission as "futile." Other companies in suit are Home Box Office, American Television and Communications Corp., Manhattan Cable Television Inc., U.A.-Columbia Cablevision Inc., Warner Communications, Teleprompter Corp. and Theatrevision.

Mr. Elkes said group believes rules conflict with established antitrust principles by inhibiting competition, exceed commission's authority and, in regulating content of programing, violate First Amendment.

Broadcast industry representatives, including network executives and National Association of Broadcasters officials, have also been extremely critical of rules since information on direction they were taking became known two weeks ago (*Broadcasting*, March 10). Broadcasters feel rules on films are virtually meaningless as protection against siphoning by pay cable. "The private interests of the program suppliers are being served while the public interest is being ignored," said Donald Zeifang, NAB's vice president for government relations.

Besides adopting new rules for pay cable and pay TV, commission initiated two spinoff inquiries. One will check into alleged practice by networks of "warehousing" feature films; commission said public interest may require measures which limit or prohibit television from denying subscription industry access to programs. Other inquiry is to obtain data on whether further changes should be made in rules governing subscription's use of series-type programs. New rules permit pay operators to exhibit series not previously exhibited on free television.

Commission vote on new rules was 6-to-1, with Commissioner Glen O. Robinson dissenting in part and concurring in part. He issued statement describing rules governing pay operators' use of films as "protectionist." He agreed broadcasters have reason to fear pay operations, but said commission does not sit to "protect broadcasters' profits." Commission, he said, must protect public interest, and that is "served by the free and open development of pay cable." However, in view of "importance of certain live sporting events, . . . and the absence of a competitive mechanism to expand their numbers if they are appropriated," he said, he concurs in placing some "siphoning" restrictions on sports – although he regards them as unduly complex.

Package of rules commission adopted conforms basically to information that became available two weeks ago, although there are some modifications and some gaps have been filled. For instance, market so far as pay cable rules are concerned includes all conventional television stations cable system must carry under commission's cable rules. Pay television station's market includes all conventional stations that place Grade A contour over community in question.

Rules on films that Commissioner Robinson finds "protectionist" – and which broadcasters say are hopelessly inadequate – will permit pay cable and pay television operations to bid on films less than three years old, more than 10 years old if they have not been shown in market in preceding three years, and films of any age if they are under contract to station in market or to network with affiliate there. In addition, subscription exhibition of any film will be allowed if pay entrepreneur can demonstrate that, even absent subscription television, it would not be