

programs and early evening newscasts. Newtel is new firm headed by Frank Beazley, former TVN vice president. 221 Rockhill Road, Bala-Cynwyd, Pa. 19004; (215) 667-4033.

Popping along. Show Biz Inc., Nashville, reports its musical variety half hour, *Pop Goes The Country*, has been sold in 112 markets as it goes into its second year of syndication. Latest clearances: KHTV(TV) Houston; KMTV(TV) Omaha, Neb.; KTLA(TV) Los Angeles; KCRA-TV Sacramento, Calif.; WCIX-TV Miami and WMC-TV Memphis.

CPT's Gerber on family viewing

He attacks it in satiric speech before Hollywood NATAS chapter

David Gerber, executive vice president for worldwide production, Columbia Pictures Television, told members of the Hollywood chapter of the National Academy of Television Arts and Sciences last week that it is like a Turkish bazaar or a tobacco auction when studios argue today with network program practices people in the light of family viewing strictures. And he proceeded to ape the famous American Tobacco radio spiel with this chant:

"I'll take three bloody arms for three bloody legs. I'll take one shot of Angie's rear for half a bloody arm. You give us a full bloody leg for three damns and two hells . . . Who wants a damn? Who wants to take a hell here? Take one damn there. Three hells here. But I had three hells last week. I'll tell you what we do. We'll cut it down to one damn if you give me a bloody leg for next week. We'll take one here, three there. Sold to American Tobacco . . ."

"The family viewing hour has been a good innovation by the networks. It's been very, very successful," Mr. Gerber said. "It's so boring they have managed to drive the family back together."

He also said that television network programming executives are "just flailing around" in discussing program developments for midseason and beyond. But there are going to be some extraordinary moves in programming, not only in mid-season but even before, particularly time-period switches, he added.

Right now, he said, network programmers are only concerned about the 8-9 p.m. period. "It's all patchwork, not creative," Mr. Gerber said. "We cannot afford to have the creative rights of producers destroyed," he continued. And he added, "Creative integrity must be protected; it should not be required to conform to pressure groups." He called on network presidents to stand up against such pressures.

Seconding Mr. Gerber's remarks and urging backing for the pending lawsuit to be filed by the Writers Guild of America and others, was John Mitchell, president of CPT, who was in the audience.

Cablecasting

FCC reinforced by court on cable authority

In rejecting ACLU effort to put CATV under common-carrier regulation, San Francisco bench says commission has broad powers of the medium and should be afforded flexibility

The U.S. Court of Appeals in San Francisco, by a 2-to-1 decision, denied ACLU's petition for review of the commission's 1972 cable TV rules that was directed at the commission's failure to impose common-carrier obligations on cable television's access channels and to limit cablecasting by the cable owner to one channel.

The U.S. Court of Appeals in San Francisco turned down the ACLU petition for review of the commission's 1972 cable TV rules that was directed at the commission's failure to impose common-carrier obligations on cable television's access channels and to limit cablecasting by the cable owner to one channel.

But the decision may have impact beyond the confines of the case in which it was issued. For the court, in affirming the commission's order, expressed the view that the commission's authority over cable is broad, not narrow, and that the commission should be allowed flexibility in regulating the new industry.

ACLU had argued that the kind of regulation it sought would, among other things, better guard against discrimination in providing access to channels, provide tariffs for the use of the access channels, and prevent the cable system operator from pre-empting the bulk of the revenues the access channels would generate. The result, ACLU contended, would be far more sources of programming.

The court conceded that the position was not "without merit." The commission, it noted, had recognized the merits of the position. But it had also rejected the proposal as "premature," the court said, and had fashioned its regulations to provide an incentive to the cable systems to originate material attractive to subscribers and "to avoid constraints on experimentation and innovation."

The court said it could not quarrel with the commission's conclusions. The commission's position, it said, "is a rational choice and does not represent arbitrary and capricious action. Substantial evidence supports its decision." The court added that, to prevail, ACLU would have had to demonstrate adoption of its proposal is required by the statute the commission cites as authority for regulating cable television. "This," the court said, ACLU "cannot do."

The court said the commission's authority is found in the Communications Act but is not restricted either to the subchapter dealing with common carriers

or to the one dealing with broadcasters. Court decisions establishing the commission's authority to regulate cable, it said, indicate that that authority "is very broad and is not circumscribed" by the rules of either subchapter.

The initial Supreme Court case upholding the commission's authority to regulate cable said the Communications Act provided the commission with such authority as is "reasonably ancillary" to the regulation of television broadcasting. The evolution of cable television regulation since that decision in 1968, the court said, should not now be governed by the common-carrier section of the Communications Act "simply because access channels, a portion of a cable system's capacity, possess technical characteristics which make possible their regulation as a common carrier."

The court said that the commission "must be accorded flexibility" in dealing with cable television and that its jurisdiction "should not be rigidly compartmentalized in licensing and public utility functions." If the commission's flexibility is to be reduced, the court added, that is a job for Congress.

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