

grams from free television to pay cable and said the commission had failed to take sufficiently into account the views of the segments of the general public that favored retention of the existing restrictions on pay-cablecasting operations. The NAB said in a news release that the groups represent more than 20 million Americans.

The other, however, filed by former FCC General Counsel Henry Geller, who is now associated with the Aspen Institute, attacked the new rules as arbitrary, anti-competitive and, because of their "overbreadth," violative of the First Amendment. He urged the court to remand the pay-cable proceeding to the commission.

Mr. Geller's petition was not the only one not associated with the pay-cable business that attacked the rules. The National Citizens Committee for Broadcasting, an intervenor in the case, urged the court to invalidate the rules on the ground that they represent "a backward step in the effort to give cable the economic base for providing the other services it can potentially add to a national telecommunication scheme of diversity and abundance."

The new rules deal principally with movies and sports events. They permit pay-cable systems to use theatrical films that are less than three years old/or more than 10 years old if they have not been shown in a market in the preceding three years, and films of any age if they are under contract to a station in the market or to a network with an affiliate there.

Subscription exhibition of a film would be allowed also if a pay entrepreneur could demonstrate that, even in the absence of a pay operation, the film would not be made available to free television or that conventional television would not want it.

The rules would deny specific sports events, such as the Rose Bowl or the World Series, to pay cable unless they had not been seen on free television for five years. Protection of regular-season, pre-season, home and away games is based on a "high-water mark" principle: If a television station carries 25% or more of the games in any category in one of the preceding five years, a pay system could carry up to 50% of the games that television did not present in the high-water mark year. If television coverage of the sport does not hit the 25% mark in any of the five years, the pay operation would be allowed to transmit the number of games not telecast in the season when the most games were telecast.

Columbia Pictures and those associated with it in its appeal, say, moreover, that the rules are "arbitrary and capricious," and are not "logically or factually related to the 'siphoning' of product." And United Artists Corp. and Metro-Goldwyn-Mayer contend that the commission's action, admittedly aimed at protecting broadcasters from competition, is "contrary to the [the agency's] duty to promote national antitrust policy in the communications field."

Those rules, Home Box Office and those associated with it in its brief con-

tend, violate the First Amendment—they "restrain pay-cable's freedom to select programs; they curtail the freedom of program suppliers to seek access to new and vital markets for expression of their protected speech; and [they] trample the public's freedom to make choices among alternative media and to receive the maximum diversity of programs and formats from different sources."

The broadcasters, also, said the commission had violated the First Amendment—but it was the public's First Amendment rights that concerned them. Metromedia said that, in adopting rules that would permit pay cable to siphon programming from free television, the commission had acted "in derogation of the paramount First Amendment rights of the viewing public."

The NAB, in addition, said the commission exceeded its authority in seeking to establish the development of pay-cable as a goal of equal priority with that of preserving free television. The commission's responsibility, NAB said, is limited to "permitting" pay cable television to develop within a regulatory framework which insures that the public interest in developing and preserving free broadcast television as a source of quality entertainment and informative programming is not compromised."

The three networks also contended that the commission had changed its policy regarding pay-cable regulation without offering any sound factual basis for that action, and that the new rules will permit siphoning of programs from free television, or at least a delay in the presentation of feature films on free television. CBS, in addition, said that the commission erred in not extending antisiphoning restrictions to all cablecasting, instead of only to those systems levying a per-channel or per-program charge. It noted that cable operators could sell service for an all-inclusive fee that would cover a pay service.

The FCC and the Office of the Commissioner of Baseball, which is concerned with defending the commission's authority to regulate signals transmitting athletic events, are scheduled to file their replies in 30 days.

Sports-carriage rules for cable to stand

FCC rejects pleas to reconsider, but does make changes that will forestall another Buffalo incident

The FCC has denied requests from broadcasters and professional sports groups to reconsider its sports-carriage rules for cable TV. The rule adopted last summer (BROADCASTING, June 30) prohibits a cable system from importing a sports event into a 35-mile zone around the local station in a city that is blacked out for that particular game.

Sports groups, including the National



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