

are available for pay cable, while those more than three years old but less than 10 are available only if they are under contract to conventional television. Films more than 10 years old may be shown for pay if they have not been seen on conventional television in the preceding three years. "Specific" sports events, such as the World Series, are denied pay cable if they have been seen on conventional television in any one of the preceding five years. "Nonspecific" events are available on the basis of a complicated formula geared to the number of such events that have been seen on conventional television.

Mr. Rose and the division's lawyers who helped prepare the brief and who appeared with him to answer reporters' questions stressed their belief that the rules are designed to restrict pay cable's ability to compete with conventional television and that they actually deny viewers program choices—assertions made in the brief. They also contended, as the brief does, that the commission had failed to demonstrate that the protection being provided conventional television is necessary.

In that connection, they referred to what they called the puniness of the cable television industry. Kenneth G. Robinson Jr., who heads a new section in the division that deals with regulated industries, said that only some 450,000 to 750,000 cable television subscribers have access to pay channels or programming, and that only some 10 million homes in all are wired for cable television.

An industry of that size, the department officials indicated, was not likely to have the economic strength to outbid television broadcasters, including the networks, for the programs to which viewers have become accustomed.

If such a threat were to develop, they said, as they do in the brief, Congress and the commission could act swiftly enough to protect the public interest.

But the brief regards program siphoning as a legitimate concern only as applied to sports. The "worst" that could happen in connection with movies, the brief says, is that "there might be some delay" in the appearance of some films on conventional television.

As for the commission's expressed concern for the preservation of the "existing conventional television structure," the brief says, that is "not a goal cognizable under the Communications Act. . . . Nothing in the statute makes conventional television as such the chosen instrument of Congress."

And as for the industry's profitability, the brief says, that is not a proper concern of the commission either. The commission would be required by law to be concerned about a decline in broadcaster profits only if the drop could "be expected to lead to an over-all deterioration in public service." And the commission's decision, it adds, "makes no finding that the severe restrictions it imposes upon pay cable are necessary to preserve service for any significant segment of the populace."

In Brief

■ FCC's Feb. 17 en banc open meeting will be **wall-to-wall with broadcasters**. National Association of Broadcasters, which wants to talk about cable regulation, has commitments from 97 members, will mount panel including Chairman Wilson Wearn of Multimedia Broadcasting, Greenville, S.C.; C. Wrede Petersmeyer of Corinthian Broadcasting, New York; Lawrence (Bud) Rogers II, retiring head of Taft Broadcasting, Cincinnati; Bill Bengston of KOAM-TV Pittsburg, Kan.; Samuel Carey of WBOC-TV Salisbury, Md.; Robert Rice of WRAU-TV Peoria, Ill., and, tentatively, Don Curran of Kaiser Broadcasting, San Francisco. Also in room that day: Jack Valenti of Motion Picture Association of America and representative of National Black Media Coalition. ■ Number of Washington communications lawyers are said to be "furious" after FCC sent stations they represent **notices of apparent liability** for broadcasting alleged lottery information in commercials for local pants store. Stations involved are WASH(FM), WEEL(AM), WHFS(FM) and WMAL(FM), each cited for \$3,000, and WEAM(AM) and WPGC-AM-FM, cited for \$2,000. Lawyers contend there is dispute as to facts in case and that staff did not provide commission with their side. ■ Senator John McClellan (D-Ark.), speaking to chamber empty of all but presiding officer, opened **floor debate on copyright bill** (S. 22) last Friday. Senator John Tunney (D-Calif.) entered and announced he will introduce amendment to shorten from 10 to seven years time between copyright rate adjustments (including those for cable TV) by proposed royalty tribunal. Amendment introduced last Thursday by Senators Hubert Humphrey (D-Minn.), James Buckley (R-N.Y.) and Alan Cranston (D-Calif.) would make compulsory license for public broadcasters apply only to musical works. Debate continues next week; Congress is in recess this week. ■ **Representative W. Henson Moore** (R-La.), named three weeks ago to House Commerce Committee, joins Communications Subcommittee. He replaces Edward Madigan (R-Ill.), who moved to another subcommittee. ■ Voice of Charlotte (N.C.) Broadcasting's Co.'s application for **renewal of license of WRPL(AM)** there has been set for hearing by FCC. Issues include questions of licensee's technical qualifications, whether it exercised adequate control and supervision. In another disciplinary action, Administrative Law Judge James F. Tierney recommended **one-year renewal** for White Mountain Broadcasting Co.'s WMOU(AM) and WXLQ(FM) Berlin, N.H., and ordered licensee to pay **\$10,000 fine** and to make full restitution of all revenues he said it unjustly acquired over almost five years of fraudulent billing. ■ CBS Sports will pay reported \$1 million for live-TV rights to **Muhammad Ali-Jean Pierre Coopman** world heavyweight championship fight from San Juan, P.R., on Friday, Feb. 20 (9-11 p.m. NYT). ■ Political tug-of-war between Corporation for Public Broadcasting and Public Broadcasting Service over administrative control of proposed **satellite project** (see page 50) may stall go-ahead decision, scheduled for this week's PBS membership meeting in Los Angeles. CPB has proposed dividing responsibilities for implementation of project; PBS Vice Chairman Hartford Gunn Jr. feels project requires one person in charge. ■ FCC has admonished New Jersey broadcaster for threatening state legislator and governor that his stations would not editorially support state bond issue unless its backers purchased advertising time on New Jersey stations to promote it. Commission last week noted that **Herbert W. Hobler's** WHWH(AM) Princeton and WPST(FM) Trenton said he did not slant news concerning bond issue and did not base decision on whether to editorialize on placement of advertising. But commission said threat "was highly irresponsible and inconsistent with the public interest obligations placed on all licensees." Mr. Hobler told BROADCASTING letter wasn't threat but "cry for help in behalf of New Jersey broadcasters," who, he said, are consistently ignored by state officials in dispensing news and buying advertising time. ■ **National Black Media Coalition** has gone into three arenas to accuse **National Public Radio** of employment discrimination. It filed class-action suit in U.S. District Court in Washington and complaint with U.S. Equal Employment Opportunity, and sent letters to Senator John O. Pastore (D-R.I.) and Representative Torbert Macdonald (D-Mass), chairmen of Senate and House Communication Subcommittees. NPR President Lee C. Frischknecht denies allegations, claims 17.5% minority employment is consistent with proportion in work force. ■ Search for **number two man** at National Cable Television Association continues after second candidate—Joseph S. Jenckes, administrative assistant to Senator Paul J. Fannin (R-Ariz.)—declined offer. Instead, he's joining White House as special assistant for legislative affairs. John W. Hushen, White House deputy news secretary, had also talked with NCTA President Robert Schmidt about position (BROADCASTING, Dec. 22, 1975), but reportedly failed to reach agreement. ■ **Arthur Bernstone**, chief of FCC's Rules and Standards Division, will retire March 1, after 21 years with commission.