

MEN

25-49

WGMZ

Flint

#1

KBIG

Los Angeles

#4

WQAL

Cleveland

#1

WNTQ

Syracuse

#

TIE

RANKINGS
BASED ON
APRIL-MAY 1977
ARBITRON RADIO
ESTIMATES,
METRO SHARE,
MON-SUN
6 AM-MID



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Media

Supreme Court will take on crossownership, rejects appeal on pay cable

It's one up, one down for FCC and for broadcasters; threat of losing sports attractions will be taken to the Congress; ex parte question remains up in the air

The FCC won one and lost one in the Supreme Court last week. The high court, in its first day of the new term, agreed to review an appeals court decision reversing the commission on the question of newspaper-broadcast crossownership. But it refused to review the case in which the same lower court overturned the commission's pay cable rules.

The decision to consolidate the commission's appeal and five others and hear arguments in the crossownership proceeding offers new hope for owners of co-located broadcast and newspaper properties that they can avoid divestiture.

The commission's order in the case was limited to barring the prospective creation of such crossownerships and requiring the breakup only of 16 cases of what the commission said were "egregious" monopolies. The U.S. Court of Appeals, acting on an appeal by the National Citizens Committee for Broadcasting, affirmed the prospective rule but overturned other parts of the order. Then it went further, to direct the commission to initiate a rulemaking aimed at requiring the break-up of all commonly owned and co-located newspaper and broadcast properties.

"Nothing can be more important than insuring that there is a free flow of information from as many divergent sources as possible," the appellate court said, quoting from an FCC policy statement. A check at the time indicated that the court-ordered rule could affect 153 newspaper-broadcast combinations involving 291 stations—135 AM's, 96 FM's and 60 TV's (BROADCASTING, March 7).

The commission was alone in arguing that there were legitimate grounds for banning the creation of new combinations while leaving the existing ones intact; the National Association of Broadcasters and the American Newspaper Publishers Association said there is no basis for banning crossownerships, new or old, and that such a ban violated the First Amendment. But they along with a number of individual licensees agreed with the commission that the court had exceeded its authority in directing the FCC to institute a rulemaking.

The Department of Justice also adopted the latter position, in a memorandum filed

with the high court (BROADCASTING, Oct. 3.). However, it also said it does not believe the commission has justified its decision to grandfather most existing same-market crossownerships. That section of the order, it said should be set aside.

The Supreme Court's denial of petitions to review the lower court's decision wiping out the rules designed to protect conventional television against the loss of movies and sports attractions to pay cable does not end the matter. It shifts the scene of the dispute to Capitol Hill, where broadcasters will seek protective legislation.

NAB President Vincent Wasilewski said that "Congress is going to have to look at the issues . . . We'll be starting a legislative effort in that regard."

The Association of Independent Television Stations will also be active. Herman Land, INTV president, expressed concern that Congress's interest in the matter seems to be limited to such blockbuster items as the World Series and Super Bowl. He said Congress must be made aware that independent stations, particularly, are worried over the loss of coverage of local professional baseball, basketball and hockey games throughout the season. He expressed the hope that an industrywide effort could be organized to alert Congress to such concerns.

Thus far, at least, there is no sign of Congress springing to life on the issue. Representative Lionel Van Deerlin (D-Calif.), chairman of the House Communications Subcommittee, said his panel would consider the question in connection with the network sports inquiry and the Communications Act review now under way. Separate legislation, he added, will not be considered before the completion of the draft of a new Communications Act, now expected in January. But "it is very likely that [Congress] will do something," he said.

The subcommittee would be prompted to act sooner, however, he said, if "some S.O.B. decided that the 'sky's the limit,' and begins to take the Rose Bowl and the NCAA basketball finals and the World Series. Then some urgency would be applied." But he doesn't see such a crisis developing.

As for the cable interests, they are viewing the Supreme Court's action with some satisfaction, but with a sense of frustration, too. Robert Schmidt, president of the National Cable Television Association, said the industry was happy the Supreme Court decided not to review the lower court's opinion, which held that the commission had failed to justify any need for the rules and that the rules, as written, violated the First Amendment.

But, he added, "We're still not out of the woods." He was referring to the cable interests' contention that pay cable operations were denied access to motion pictures as a result of the exclusivity provisions the network obtain in the contracts they negotiate with producers when buying their product.

The commission last month terminated