one whose objectivity is subject to serious question."

AAAA Vice President Robert Purcell said the industry had a "particularly strong case" and was "delighted" by the decision. "It is just another indication that the chairman just isn't going to do virtually anything he wants. He chose to be an advocate, and all our position was, if he is going to be an advocate, he shouldn't be the judge at the same time," he said.

Peter Allport, president of ANA, said the decision was "clearly warranted in light of repeated revelations of the chairman's obvious prejudice on the merits of children's advertising." And ANA Vice President Sam Thurm said, "We are encouraged by the court's decision and confident that an impartial and fair hearing will now result."

Vincent T. Wasilewski, president of the National Association of Broadcasters, said, "While the NAB did not choose to join in this case, we believe that the FTC's proceeding on television advertising viewed by children has, from the outset, reflected the personal bias of FTC personnel. Their words and actions have demonstrated a prejudice which makes due process almost impossible."

The FTC has already received what has been interpreted as a "strong message" from Congress to steer clear of any broadcast advertising bans in the children's case. In May, the House Appropriations Committee inserted a somewhat ambiguous provision in an FTC money bill prohibiting the commission from promulgating the children's advertising proposal in 1979, but allowing the spade work to go on (BROADCASTING, May 29). Mr. Pertschuk announced the vote wouldn't stop the inquiry, but the groups that had sought the Appropriations amendment, primarily the candy manufacturers and advertising and broadcast associations, claimed that the vote showed that Congress would never allow the proposal to go through.

While the House's bill subsequently became hung up on the floor for parliamentary reasons, a parallel move had begun in the Senate, where the Appropriations Committee cut the commission's budget proposal and wrote an appropriations report warning the FTC it was treading on thin First Amendment ice with the proposed advertising ban (BROADCASTING, Aug. 7).

The two houses' positions were subsequently compromised in conference committee, which repeated the Senate Appropriations Committee's First Amendment warning and inserted, as report rather than legislative language, the House's prohibition against promulgating a rule next year (BROADCASTING, Sept. 18).

To cap it all off, Senator Ernest Hollings (D-S.C.), who is chairman of the Appropriations Subcommittee with FTC jurisdiction, has announced that his other subcommittee, Communications, plans to take the lead away from the FTC, which he said has overstepped its authority in the children's TV case (BROADCASTING, Oct. 23). He objected to the commission's approach, which he characterized as singling out one particular product—sugar—for a particular action— an absolute advertising ban.

But the senator's proposed inquiry is no great substitute, as far as broadcasters are concerned. He said he's more concerned with "rotten minds" than "rotten teeth," in children, and wants to study a wide range of television problems.

Distant signals closer and closer

FCC shifts to broadcaster burden of proof that imports would damage on-air market

The FCC last week took another step in deregulating cable television, lifting much of the burden of proof from cable systems seeking a waiver of the distant signal rule. The action—combined with one the commission took a week earlier—could lead to the creation of superstations whose signals are carried in cities around the country by cable systems offering as many distant signals as their plants will accommodate.

The action, as anticipated ("Closed Circuit," Oct. 30), was taken in response to the petitions of Washington, D.C., stations for reconsideration of the distant-signal waiver the commission had granted Arlington Telecommunications Corp., an Arlington, Va., cable system, to permit it to import television signals from Baltimore. The vote was 4-2, with Commissions Robert E. Lee and Abbott Washburn dissenting and Commissioner Tyrone Brown not participating.

Essentially, the new policy provides for a shift in the burden of proof.

Until last week, cable systems seeking a waiver of the rule limiting the number of distant signals they could import were required to make two showings: (1) that the importation would not adversely affect the ability of stations in their area to serve the public as a result of loss in either audience or revenues; (2) that there were unique circumstances that justified the waiver. Under the new policy, the second showing is no longer required; systems will be required only to show that local stations would not suffer as a result of the proposed signal importation.

If the commission agrees that a prima facie showing has been made on that issue, it will offer the station an opportunity to offer rebuttal. But such a rebuttal would generally require broadcasters to put their station's finances in issue.

What's more, the only limitation on the number of distant signals a system can carry—other than the limit imposed by channel capacity—will be the ability to pass the no-impact test. The Broadcast Bureau had suggested that the commission limit the new policy to overlapping markets, like Washington-Baltimore. But bureau staff members were not even asked to discuss the suggestion.

To the National Association of Broadcasters, the commission action was a matter of conern. John Summers, NAB executive vice president, said the commission was engaging in "legislation by waiver."

The National Cable Television Association, not surprisingly, expressed pleasure. But it made clear it didn't expect the commission to stop with that action. Robert Schmidt, NCTA president, said, "We recognize this as an interim procedural change until the FCC completes its cable/broadcast economic inquiry." He also expressed hope that the commission will develop a policy "whereby cable is regulated in terms of its impact on the public interest rather than its impact on the private interest of broadcasters."

Commissioner James H. Quello, for one, seemed ready to move in that direction. He viewed—with apparent approval—the commission's action as leading to national satellite-fed cable networks. He noted that Mobil Oil is working with Turner Communications to carry programing on its superstation, WTCG(TV) Atlanta, for relay by satellite to 700 systems. "That's a network already," he said. He feels the new waiver policy substitutes market-place decisions for government regulation.

Commissioner Washburn, in a dissenting statement, said the commission has "eroded the rule to meaninglessness." Indeed, he said, it has changed the rule without a rulemaking.

One commissioner who seemed to see the action as a possible danger to broadcasters was Mr. Lee. Does the new policy, he wondered, "do violence to the multiple-ownership rule?" He said he was concerned with the possible dominance of a station like WGN-TV Chicago—usually mentioned first in discussions of potential "superstations"—if it is carried on systems around the country.

Cable Television Bureau Chief Philip Verveer noted that the network inquiry staff is examining the question of satellite-fed networks of systems and their possible impact on the commission rules. "For the moment," he added, "the critical element is that there is not enough cable out there, even if the station were carried to every home, to do what's been attributed to the superstations. These stations probably won't end up with larger audiences than those of independent stations in New York. Some 14 million homes are now served by cable television.

The commission's action does not resolve the issue raised by the petition filed by the Washington stations—WRC-TV, WTTG(TV), WJLA-TV, WDVM-TV and WDCA-TV. The commission said that since it was enuciating a new policy, it would give the stations an opportunity to rebut the Arlington system's showing that its importation of the Baltimore signals would not hurt their ability to serve the public.