onsequence by eliminating the suggested uplicate affiliate exemption."

The Justice Department, in supplemental omments, opposed the FCC's adoption of ıe industry compromise on must carry.

Turner Broadcasting System asked the CC to reject the compromise. "The fundaıental problem of the compromise is that it uts the government in the position of favorıg certain speakers—broadcasters—ahead f other media, including cable programers ke TBS, cable operators and low power roadcasters," TBS said. "And that concept 'wholly foreign to the First Amendıent.' "

TBS also said that the absence of any ıeaningful effect on both the broadcast and able industries since the must-carry rules 'ere struck down more than eight months go was "forceful evidence" that no new ıles can be justified. "Finally, by requiring ll must carries to be placed on the lowest riced tier, the compromise unconstitutionlly asks the government to dictate what cale operators place in the equivalent of their 'ront page,' without regard to operators' ditorial discretion or to viewers' prefernces and no matter whether it freezes cable rogramers from the front page," TBS said.

Cablevision Systems Corp. said there 'asn't enough evidence that cable poses a ıreat to broadcasting to justify the intrusion roposed by the compromise rules. "Even if ıere were such evidence, the proposed rules re not narrowly drafted to promote local roadcasting or the availability of 'free teleision' using the means least restrictive of able operator choice, such as, for example, ıore effective means of insuring viewer acess to broadcast signals through an A/B witch," Cablevision said. "The commision has not even defined what amount of ocal programing or 'free television' is conidered desirable. The standards in the proosed rules appear to have nothing to do /ith the amount of local programing carried y local stations, or with their financial staility."

Charles CATV Inc. and Chasco Cablevi-ion Ltd. also opposed the compromise. The First Amendment, as well as the ageny's enabling statute ..., simply bar the ommission from supervising the 'commuicative aspects' (including content or forıat) of a cable operator's business," they aid.

The American Cable Publishers Institute ACPI) said the compromise was unconstituonal because it "coerces" speech. The ACPI also asserted that the compromise greement was "unworkable because it comels the carriage of entrenched, mass-appeal tations over other stations that are newly ctivated or that serve narrower audiences, nd is discriminatory because it demands ıat cable not charge to carry those stations ıat can afford to pay but retains for cable the ight to charge other stations that cannot aford to pay."

ACPI also suggested an alternative rule, hould the FCC feel compelled to adopt one. Jnder the ACPI alternative, cable carriage f local broadcast TV stations would be conidered discretionary, and cable systems would be permitted to charge for that carriage. If, however, a cable operator charged any local broadcaster for carriage, other local broadcasters would have the option of petitioning the FCC for relief. If the FCC, after a hearing in which the burden would be on the broadcaster, found that the cable operator's charges and terms were threatening localism, the commission could then order carriage of local TV programing on a "nondiscriminatory equivalent basis," with that meaning payments would have to be in "direct proportion" to station rate cards.

ACPI said that if cable operators are precluded by a must-carry obligation from tampering with broadcast content, they should be immune from any liability for the content of those broadcasts.

(The ACPI, formed last December, is a nonprofit corporation that says its mission is to "protect, preserve and promote, through research and education, the status of cable television operators as First Amendment publishers." ACPI's chairman is Leonard Tow, who is also chairman of MSO Century Communications Corp. Among ACPI's other board members are Harold Farrow, an Oakland, Calif.-based attorney who has represented cable interests on antitrust and First Amendment issues; Bruce Fein, former FCC general counsel and now senior vice president for the Washington public relations firm of Gray & Co.; Carolyn Chambers, president and owner of MSO Chambers Cable Com. Inc. and KEZI-TV Eugene, Ore., and Carl Williams, chairman of MSO Televents Group Inc.)

Howard University, the National Association of Black-Owned Broadcasters, the National Bar Association and the National Conference of Black Lawyers Communications Task Force are asserting that cable companies should be required to carry minority owned stations. They said such a requirement would be consistent with the First Amendment. □

STC sells DBS assets to Dominion Video

Satellites of Comsat subsidiary will be used by new service for religious and other family-oriented programing

Dominion Video Satellite Inc., which has been trying to get into the direct broadcast satellite business since 1981, signed a conditional agreement last week to buy, for an undisclosed price, two high-power direct broadcast satellites and "related assets" from Satellite Television Corp., Comsat's now-defunct satellite broadcasting subsidiary.

The deal is conditioned on Dominion's putting unspecified amounts of cash in escrow on certain dates between now and the scheduled closing of Dec. 15, 1986. Dominion Video, headed by Robert Johnson, is a start-up company based in Naples, Fla., formed solely to enter the satellite broadcasting business. It is controlled by a small group of investors, whose names have never been released. It is one of only four companies that hold unconditional FCC construction permits to build, launch and operate a DBS system. The others: Hubbard Broadcasting's United States Satellite Broadcasting, Hughes Communications and Comsat's STC.

Although STC still retains its DBS permit, it no longer intends to go into the DBS business. It effectively gave up on the business in late 1984 after proposed partnerships with CBS and Prudential Insurance fell through. In the release announcing the Dominion deal, Comsat stressed that it "does not create a joint venture, partnership or oth-

NBC-ABC finsyn alternative

NBC and ABC have crafted a plan they hope will give them a cut of revenues from the off-network syndication market without running afoul of the FCC's financial interest and syndication rules. Those rules bar the networks from securing a proprietary interest in programs they buy from outside producers or from participating in the syndication sales of such programs.

The two networks have proposed to cover a greater portion of the upfront production costs of prime time entertainment programing, most of which is produced at a deficit, in the form of higher license fees. In return, they would be given a cut of the profits that the producers earn from licensing the off-network shows in syndication, without actually taking an ownership in the program properties. Sources at the FCC's Mass Media Bureau said the networks had not approached them about the plan and therefore could not comment on whether it would violate the finsyn rules. Among the production companies the two networks have approached are Warner Brothers, MCA and Columbia Pictures.

CBS, meanwhile, has its own plan on the table proposing that networks be allowed to produce and syndicate up to three and a half hours a week of prime time fare. In addition, the CBS plan would give the networks the option of buying an interest in network shows produced outside in exchange for restricting their own production output. However, a CBS source last week said, the network felt the "nature of the environment" has changed considerably with Rupert Murdoch's purchase of 20th Century Fox and the Metromedia stations and his plans to start a fourth network. CBS, the source said, felt its plan would need revising and was "sitting on the sidelines" for the time being, to see what becomes of NBC-ABC talks with producers.