Senate Commerce Committee approves fairness bill

Legislation moves on to floor where fight is expected

Legislation that would codify the fairness doctrine is headed for a showdown on the Senate floor after the Senate Commerce Committee's 14-4 vote last week on the bill. It's on a fast track and could get to the floor as early as next week where a lively debate is likely.

The measure sailed through the committee despite objections raised by Senators Robert Packwood (R-Ore.) and Ted Stevens (R-Alaska). Stevens, who feels the bill "goes too far," said he'll fight it on the floor. And Packwood announced he was re-introducing his "Freedom of Expression" legislation that would repeal all content regulations imposed on broadcasters.

Packwood's bill would eliminate Section 315 of the Communications Act, which guarantees rival political candidates equal opportunities in broadcast exposure, assures them of paying the lowest unit rate for purchased time and includes the general fairness doctrine. It also repeals Section 312 (a) (7) which guarantees candidates for federal office the right of "reasonable access" to broadcast time. The new version of the bill, however, does not include a former provision that said nothing in the bill would affect the FCC's ability to regulate indecency, profanity and obscenity. That provision, in the bill last year, was added at the request of Senator Barry Goldwater (R-Ariz.), who retired after the last Congress.

It was anticipated that most Commerce Committee members would support the measure, which was introduced last month (BROADCASTING, March 16) by Commerce Chairman Ernest Hollings (D-S.C.), Communications Subcommittee Chairman Daniel Inouye (D-Hawaii) and John Danforth (R-Mo.).

Supporting codification of the doctrine were Democrats Hollings; Inouye; Wendell Ford (Ky.); Donald Riegle (Mich.); J. James Exon (Neb.); Al Gore (Tenn.); John D. (Jay) Rockefeller (W.Va.); Lloyd Bentsen (Tex.); John Kerry (Mass.); Brock Adams (Wash.), and Republicans Danforth; Nancy Kassebaum (Kan.); Larry Pressler (S.D.), and Paul Trible (Va.). Joining Packwood and Stevens against the bill were Robert Kasten (R-Wis.) and John McCain (R-Ariz.). Not registering a vote were Pete Wilson (R-Calif.) and John Breaux (D-La.).

Stevens indicated he'll offer legislation that would direct the FCC and the courts not to act on the doctrine immediately, allowing lawmakers the chance to study the matter further. Congress, in an appropriations measure last year, directed the agency to reopen its fairness inquiry with an eye to examining alternative ways of administering and enforcing the doctrine and report back to Congress its findings (BROADCASTING, Sept. 29, 1986).

He urged his colleagues to delay action until the FCC reports back. "Give us a chance to look at it [the doctrine] so we'll know whether or not there are flaws," the Alaskan senator said.

But Stevens's plea was ignored. And as Hollings noted, the FCC has "done absolutely nothing about the report. That's why we're moving now." Inouye, who chairs the Communications Subcommittee, promised to hold hearings if such a report ever emerges. But "why act today?" Stevens asked. Otherwise, responded Inouye, "we may find ourselves without a doctrine."

Hollings expects the FCC to try to repeal the doctrine. He noted that although Congress thought it had codified the doctrine, the court has determined otherwise. "Now we have an FCC determined to set aside the doctrine," he told committee members.

But Packwood argued that the doctrine was not needed. "It does chill broadcasters. Because of this doctrine, they're avoiding covering controversial issues," he said. If broadcasters had the same First Amendment protections as the print press, the senator from Oregon asserted, "there would be as many voices as there are in the print press."

Packwood later told reporters he recognizes his legislation doesn't have the votes to pass, but Stevens's approach, he said, "might have a chance." Asked if he expected broadcasters to wage a major campaign to stop the bill, Packwood said it was his understanding that fairness was not the industry's highest priority—that license renewal reform legislation was. It's "very clear they're not going to use all their effort to lobby," against the bill, Packwood said. "We'll continue to resist this at every turn," said John Summers, senior executive vice president of government relations for the National Association of Broadcasters. "But we may be up against overwhelming odds," he stated. □

High court upholds ruling striking down Utah indecency statute

Supreme Court summarily affirms lower court ruling that cable law violates First Amendment

Utah's effort to enact a statute that would prevent cable systems in the state from transmitting what the state regards as indecent programing has failed again. The Supreme Court last week affirmed a lower court ruling that the state's 1983 statute aimed at limiting the sexual content of cable programing violated the First Amendment. At issue was a district court ruling that the Cable Communications Policy Act of 1984 preempts the state regulation of cable programing, except that held to be obscene. And Utah's Cable Television Programing Deceny Act, a federal appeals court noted, is not limited to obscene material as defined by the Supreme Court in its landmark *Miller v. California* decision in 1973 (BROADCASTING, Sept. 15, 1986).

The high court last week did not issue an opinion. It simply summarily affirmed the decision of the U.S. Court of Appeals for the 10th Circuit. Two of the court's nine members, Chief Justice William H. Rehnquist and Justice Sandra Day O'Connor would have supported a finding of probable jurisdiction and set the case for briefing and oral argument. Four votes are needed to assert jurisdiction. Despite the lack of an opinion, the high court's decision is binding on lower courts.

The Utah law struck down last week was the second crafted by the state legislature in an effort to screen out "indecent" cable programing. A 1981 law was thrown out by a U.S. district court on the ground that it was overbroad in its definition of the material that would be banned. The state did not appeal; instead, the legislature drafted a new law designed to avoid the constitutional defect of the original. The state attorney general attempted to protect the law against a court challenge by interpreting it as applying only to material shown between midnight and 7 a.m.

But again, the district court found the Utah effort unconstitutional—overbroad and invalid on its face because it "regulates 'indecent' material and does not limit itself to material that is legally obscene," as required by the Cable Act. The court noted that the state attorney general or county or city attorney would be permitted to bring a public nuisance action against anyone who "as a continuing course of conduct . . . knowingly distributes indecent material within this state over any cable television system or pay for viewing television programing." But the definition of "indecent" would include programing that does not depict sexual conduct, one of the standards laid down by the high court in *Miller*. And a three-judge panel of the 10th circuit affirmed the district court's decision that the state lacks the authority to regulate nonobscene speech on cable television. It issued its finding in a brief, unsigned opinion that relied on the reasoning of the district court.

The state, in appealing that decision to the Supreme Court, argued that the case presents the question of whether the First Amend-