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TOP OF THE WEEK

Syndex redux: FCC levels the playing field

FCC votes unanimously to reimpose new rules giving broadcasters exclusive rights to syndicated programing; cable vows to challenge

Despite warnings of program blackouts and threats of court challenges, the FCC brought back syndicated exclusivity rules last week in the hope of improving the quality and diversity of programing on broadcast and cable television.

"The big winners today are the consumers," said FCC Chairman Dennis Patrick, principal architect of the rules, just before they were unanimously adopted at last Wednesday's open meeting. "They will benefit by a smooth transition to a fair and more competitive market structure which promises richer, more diverse programing."

Commissioner Patricia Diaz Dennis, whose vote was in doubt until the meeting, said she, too, was convinced the rules would eventually bring more and better programing to the public. "Although American consumers will find this syndex medicine very bitter at first, because they may not see such programs as *Alf* three times a day, in the long run, the medicine should work. Although TV viewers may initially be alienated, programers may find an even better alien to deliver to consumers' TV sets."

The rules will encourage cable operators to carry original programing, Dennis said. "Instead of a so-called rule of reruns, which is what we have now, I think we can, through syndex rules, better achieve program diversity that will appeal to differing viewer preferences."

Kenneth Gordon, senior economist, Office of Plans and Policy, who is the principal author of the rules, said the rules will also lead to better broadcast programing. With the rules in place, broadcasters will be able to stem the loss of audience caused by duplicative programing on cable systems. "The ability to limit diversion means broadcasters will be able to attract larger audiences, making them more attractive to advertisers, thereby enabling them to obtain more and better programing for their viewers." (The entire text of Gordon's presentation at the meeting appears on pages 58-59.)

The rules, similar to those dropped by the FCC eight years ago, will permit television stations to enforce the exclusivity of syndicated programing not only against other broadcast stations in the market as they do today, but also against cable systems that bring in duplicative programing on distant broadcast signals, most notably the satellite-delivered superstations like WTBS(TV) Atlanta and WGN-TV Chicago (see box).

Unlike the commissioners, the cable industry could see little good coming from the rules. Following the vote, it renewed its warning that the rules, if allowed to stand, would cause cable systems to either blackout programs on distant signals or save themselves the trouble and expense by simply dropping the signals. The net result is that viewers will not be seeing more programing as the FCC hopes, but less, they said. "Somewhere in all this, the commission's primary responsibility to stand for the public has gotten lost," said National Cable Television Association President James Mooney. "People whose favorite programs disappear will be angered and bewildered."

Because of the rules' legal vulnerabilities, Community Antenna Television Association President Steve Effros does not believe they will ever go into effect—as least not as now written. But if they do, he said, the impact would be profound. Large cable systems would eventually drop superstations, and smaller ones would drop regional independents as well. WTBS may continue to be widely carried, he said, but not the others. "A hell of a lot of people are going to be upset when they lose WGN-TV and WWOR-TV [New York]," he said.

"We expect the rules...will discourage the carriage of some stations," said Bob Thomson, vice president, government relations, Tele-Communications Inc., "but those that make an effort to adjust during the year period and clear all their programing nationally will probably fare better."

Thomson said TCI would make "a major

The ABC's of Syndex II

- *Stations may now enforce their exclusive right to syndicated programing against cable systems attempting to import duplicative programing on distant signals.*
- *Syndicators also may enforce exclusivity against cable systems in all markets for one year after their first sale to a television station.*
- *Stations that sign exclusive contracts must furnish details of the deal to affected cable systems within 60 days. They must also give systems at least 60 days' notice before asserting exclusivity.*
- *Once a station or syndicator asserts exclusivity, affected cable systems must either delete the program or reach an independent agreement with the station or syndicator. Ignoring exclusivity claims is a violation of FCC rules and federal copyright law.*
- *To be enforceable against cable systems, new programing contracts must contain language specified by the FCC. Claims of exclusivity under existing contracts will be upheld if such contracts make clear they were written in anticipation of the reimposition of syndicated exclusivity. Even absent such language, stations may assert exclusivity by having syndicators confirm in writing that exclusivity was implicit in the original contract.*
- *All stations are now permitted to negotiate national exclusive rights to syndicated programs, a provision of particular advantage to superstations.*
- *Exempt from syndex: cable systems with fewer than 1,000 subscribers, or programs on stations generally available off the air (an example: Baltimore stations viewed in Washington).*
- *The rules do not go into effect for one year.*