Syndex restorers: Quello, Patrick and Dennis

effort to keep those portions of superstation programing which are not subject to blackout and which are extremely popular among our subscribers." But it could present financial problems for operators who pay full copyright fees for distant signals, no matter whether they take all or part of the signal.

Broadcasting and motion picture industries, which have encouraged the FCC to reimpose syndex, cheered the FCC action. "Both television viewers and broadcasters, who provide free programing, should rejoice at today's ruling," said Benjamin McKeel, vice president for television at Nationwide Communications and chairman of the National Association of Broadcasters TV board.

Charles Edwards, chairman of the INTV board and executive vice president of Gaylord Broadcasting, which operates KTVT(TV) Dallas, a regional superstation which reaches two million cable subscribers, said the decision was long over due. "After 25 years of backing away from the issues, of giving up another piece of pie without a decent attempt to defend ourselves, we have achieved what some indicated was close to impossible," said Edwards.

NAB President Eddie Fritts took exception to NCTA's assertion that syndex will result in the public losing its "favorite TV programs." If blackouts occur, he said, it will "only be a penalty imposed by cable on their subscribers." Cable, he said, has stated that it must have exclusive rights to programing. "What's fair for the goose is fair for the gander," said Fritts.

INTV President Preston Padden agreed. "There are lots of options to cable operators to fill blackouts; they can fill it with any programing," he said. And if it was not for cable's compulsory copyright license, he said, "there would be no need for syndex."

WGN-TV and WTBS do not like the rules and are considering legal action. But with the one-year transition and given the fact that the rules are, as Dennis put it, "almost entirely prospective," they seemed willing to live with them last week.

Bert Carp, vice president, government affairs, said WTBS(TV) will take the new rules in stride if it has to. The superstation will not lose cable affiliates or cable homes because it will not schedule programing susceptible to being blacked out, he said.

The "great bulk" of TBS's syndicated programing will be unaffected, Carp said. According to TBS's lawyers, he said, WTBS has paid a stiff premium for much of its syndicated programing because of the station's national audience and national advertising. As a consequence, he said, the lawyers do not believe the syndicator can extend syndex protection to local broadcasters for the same programing and force black-outs on WTBS.

Because WTBS's "national" programing rights are implicit in its programing contracts, Carp acknowledged that they will not be easy to assert. It will take "a lot of sweating, tugging and hauling." And while the return of syndex will not necessarily harm TBS, the provision granting the superstation the right to contract for exclusive national programing rights may benefit it, Carp said.

Turner could benefit in another way. "In the long run, it could create additional channel capacity for services like TNT," Carp said. TNT, or Turner Network Television, is the general entertainment cable network TBS plans to launch next October.

Shaun Sheehan, vice president, Tribune Broadcasting Co. (Washington office), said the rules are bad, but could have been worse. "It was like going to the dentist and thinking I was going to have four root canals, but they only did one."

Tribune will do whatever it has to do to keep WGN-TV and three of its other stations (WPIX[TV] New York, KTLA[TV] Los Angeles and KWGN-TV Denver) on the satellite. The out-of-market coverage is critical to the barter programing the stations air and in which Tribune has an interest, he said. Tribune may sue, or it may decide to fill out its schedule with nonexclusive national programing and live with the rules, he said.

The third largest superstation, WWOR-TV New York, has no plans to change. Robert Kunath, the station's general manager, said the decision "really has little effect on us" because "we didn't use it [the extra reach] in the first place."

And that's not all

In adopting its syndex rules, the FCC granted a blanket exemption to the territorial exclusivity rule to allow broadcasters, particularly satellite-delivered superstations, to secure national exclusive rights to programing. And the FCC decided to launch a further rulemaking to determine whether the territorial rule, which restricts the reach of exclusivity agreements to 35 miles of the station, should be retained and, if so, whether it should be extended to public broadcasters. According to the FCC, if the rule is retained, and the exemption goes into effect, broadcasters would be left with two options at contract time: 35 miles or the entire country.

In the context of syndex, the FCC also expanded the protection afforded under its network nonduplication rules, which now empower network affiliates to demand protection against duplicative network programing aired simultaneously. Under the new rules, affiliates can demand protection against all duplicative network programing, regardless of whether it is aired simultaneously.