

The FCC settled one of the most controversial questions in the rules by deciding that the rules should not apply to existing contracts unless the contracts contain explicit language anticipating the return of syndex or unless the broadcasters can go back and persuade the syndicator to amend or clarify the contract to afford syndex protection. "The commission's intent... is to give effect to whatever is the parties' intent," said Gordon. "We don't want to substitute our judgment as to what they meant or what they presumably know they meant."

Reflecting the broadcasters' and syndicators' point of view at the meeting, Quello complained that the rules do not apply to existing contracts. "What it means now is that unless a broadcaster had the exact words... [he or she] will have to negotiate for syndicated exclusivity with the syndicator or program producer," Quello said. And broadcasters may find that renegotiating the contracts may be "a costly step," he said. "I was looking for a more direct reimposition of syndex without having to go through another contract negotiation."

Dennis disagreed, saying she supports rules that are "almost entirely prospective." "We are not the federal contracts commission and I believe we should be very cautious about getting into the business of interfering with existing contracts," she said. "I am reluctant to assume that parties who negotiated a deal when there was no syndi-

cated exclusivity in place intended and actually meant to be covered by the rule. It simply defies logic."

Some cable executives were saying privately last week that syndicators are apt to demand higher licensing fees for syndex protection in existing contracts as well as in future ones. They pointed out that programmers have been collecting millions of dollars a year from a compulsory license surcharge that was imposed to compensate programmers for the loss of syndex in 1980. With the return of syndex, they said, the Copyright Royalty Tribunal, at cable's urging, may drop the syndex surcharge. And if the surcharge goes, they said, the programmers will be looking to be compensated for its loss. The Copyright Office estimates that 20% of the \$160 million in total 1987 cable royalties derives from the surcharge.

The broadcasters disagree with cable's analysis. Fritts said it was not in Hollywood's interest to try and "gouge broadcasters." Furthermore, he said Motion Picture Association of America President Jack Valenti has told him syndicators do not "think they will be charging extra for exclusivity."

INTV's Edwards also said he did not believe syndicators would take advantage of syndex to hike prices. He said he spoke with Mel Harris, president, Paramount Television Group, who assured him that "they will do everything they can to make this work." Edwards admitted that many broadcasters

may have neglected to include exclusivity language in their contracts, but did not think getting the language needed to claim exclusivity will be a problem.

Later, Harris confirmed speaking to the broadcasters but would not elaborate on the substance of those talks. Dick Robertson, a member of the office of the president at Lorimar Telepictures Corp., however, said Lorimar would be willing to extend syndex rights to broadcasters.

Few think the rules are final. Opponents of the rules believe they have solid jurisdictional and procedural ground to challenge the rules in court. Mooney said the NCTA will appeal.

Opponents of the rules believe the FCC has overstepped its jurisdictional bounds in adopting the rules. They claim a provision (Section 624) of the Cable Communications Policy Act of 1984 prohibits the FCC and other governmental authorities from passing any regulations that affect the content of cable programming.

The FCC counters that the provision does not apply in this case. "Readoption of syndicated exclusivity protection does not... fall under that prohibition," it said. "By reestablishing syndicated exclusivity, the commission is not dictating the program services that a cable system must carry. Instead, it is permitting broadcasters to enforce contracts for which they have negotiated exclusive rights." □

Smooth sailing forecast for children's ad bill

Congress, citizen groups appear satisfied with H.R. 3966; broadcasters won't fight it; legislation would limit commercials in children's TV and add to licensees' public interest obligations

A bill that would restrict advertising in children's programming and require broadcasters to serve the "special needs" of children sailed through the House Telecommunications Subcommittee last week by a vote of 22-2 (Representatives Tom Tauke [R-Iowa] and Thomas Bliley [R-Va.] opposing). Support of the legislation (it has undergone considerable revision) is formidable, and the bill is expected to breeze through the parent Energy and Commerce Committee and on to the floor. The National Association of Broadcasters is refusing to endorse the measure (H.R. 3966). But NAB President Eddie Fritts has promised Subcommittee Chairman Ed Markey (D-Mass.), a principal sponsor, and Commerce Committee Chairman John Dingell (D-Mich.) that broadcasters will not fight it, although he told the lawmakers that NAB is reserving the right to oppose any alterations that might surface when the Senate acts. NAB's position has been sanctioned by the networks, their affiliate groups, and the Association of Independent Television Stations. "Our lawyers say we can live with it," said Fritts.

The bill is the product of nearly two months of intensive negotiations between Markey and the NAB (BROADCASTING, April 4). Originally, the measure (offered by

John Bryant [D-Tex.], Terry Bruce [D-Ill.] and Markey) would have required broadcasters to air one hour per day of informational and educational programming. Also absent in the final bill are provisions aimed at eliminating so-called program-length commercials (removed a day prior to the subcommittee's action). However, Markey said he is prepared to "revisit this issue if it is not resolved satisfactorily by the commission or courts."

And broadcasters were able to "water down" language tying the renewal process to children's programming. In the initial version, the FCC would have had to review "the extent to which the licensee has provided programming specifically designed to serve the educational and informational needs of children." But under the revised bill the FCC would have to determine whether the licensee has "served the educational and informational needs of children in its overall programming." The NAB believes the subcommittee will further dilute that requirement in its report.

In this case, said Fritts, "we truly met in the spirit of compromise." Moreover, the NAB president said he believes the bill will help cement a "good working relationship" with the subcommittee. He may be right. Markey praised broadcasters for negotiating in "good faith." And the chairman said he believes the compromise will serve as the "framework for future compromises with the industry."

The subcommittee approved a substitute bill offered by Markey and Matthew Rinaldo

of New Jersey, the ranking Republican on the subcommittee. It would impose advertising limits of 10½ minutes per hour on weekends and 12 minutes per hour on weekdays. (Those constraints are more liberal than the old NAB code, which allowed 12 minutes per hour on weekdays, but only nine-and-a-half minutes on weekends.) The jump in weekend time is attributed to requests from ABC, which has reported to BROADCASTING that it carries 11 minutes per hour on weekends (BROADCASTING, April 25).

The commercial limits would not take effect until after Jan. 1, 1990, and by 1993 the FCC would be authorized to review the standards and modify them if necessary.

The bill's findings state that broadcasters, as a part of their obligation to serve the public interest, "should provide programming that serves the special needs of children." It also recognizes that the "financial support of advertisers assists in the provision of programming to children; special safeguards are appropriate to protect children from overcommercialization on television."

Despite the legislation's transformation, Action for Children's Television President Peggy Charren was upbeat about its potential. There is "no question it's watered down" from the original version, said Charren. Nevertheless, she said she feels it is significant because it limits advertising and puts broadcasters on "notice" that they have to serve children. She is eager and optimistic about the bill's prospects for passage. Said Charren: "It is obvious...if the NAB isn't opposed to it, why fight it?" □