

Is CATV's future in FCC's hands?

That's what high-court copyright ruling implies,
but authorities at commission and elsewhere say

Congress should step in with new legislation

The dark cloud of copyright liability that had long hung over the CATV industry appeared to have passed out of sight last week, wafted along by a U.S. Supreme Court decision that CATV systems do not incur liability when they pick up and retransmit copyrighted programming.

But no sooner had the industry begun to enjoy the sunshine than new clouds began rolling in. The FCC was facing up to what it saw as the need for new, and possibly tougher, CATV rules to accomplish the goal of integrating CATV into the existing system of free, local television. Commission sources said the present rules, adopted in March 1966, were only a "holding action" designed to keep CATV matters under control until the copyright question was resolved.

And while many in Washington counted the court's decision a resounding victory for the CATV industry, not all lawyers agreed it was as sweeping as it appeared. Some said it seemed to be limited to the kind of systems involved in the decision—nonmicrowaved operations that do not originate programming. CBS was trying to decide last week whether to test that theory, with a copyright-infringement suit of its own that has been on file since 1964.

However, the high court's decision last week, on a 5-to-1 vote, was a stunning surprise, reversing as it did an appeals court decision that had affirmed a federal district court's opinion.

Essentially, the court held that CATV systems are "viewers" rather than "performers" and thus do not infringe copyrights when they pick up and relay copyrighted material.

Earlier Decision ■ The decision was being read in Washington—and particularly at the FCC—in conjunction with the one handed down by the high court a week earlier conferring broad authority on the commission to regulate CATV systems (BROADCASTING, June 17).

Chairman Rosel H. Hyde and other members of the commission had long

counted on copyright to lighten the commission's regulatory burden in CATV. They felt that, if CATV systems were held liable for copyright payments, the systems would be forced to compete on more equal terms with stations and that, as a result, the commission's need to afford broadcasters economic protection against CATV competition would be reduced. Furthermore, some pointed out that stations' right to exclusive use of copyrighted material would be protected to a greater degree than that provided by the commission's nonduplication rules.

But in light of last week's Supreme

Court decision, the commission realizes it will have to do more, not less. And, in light of the earlier decision, it is satisfied it has all the authority it needs.

There was talk at the commission of limiting severely CATV systems' right to originate programming and carry commercials. (Chairman Hyde said last year that some commissioners feel that CATV systems that use the product of broadcasters "should be limited in the extent to which they may originate programming and carry advertising" [BROADCASTING, May 1, 1967]).

Some officials have even mentioned the possibility of licensing CATV sys-

It was a big week for NAB, NCTA

Feature of the NAB joint-board meetings in Washington last week was the "topping-off" ceremony for the new NAB headquarters. Appropriately enough NAB President Vincent Wasilewski (wearing a hard hat, as were all NAB board members) made a dedicatory speech through a bullhorn. Among his comments: "This building is being erected by 50-cent spot announcements."

Before and during the speech champagne was served. (See page 45).

Meanwhile, down the street, members of National Television Cable Association were pondering their apparent copyright victory in the U. S. Supreme Court (see above) and wondering about changes in the agenda for their annual convention (see page 33) scheduled to begin in Boston next Saturday.

While NCTA President Frederick Ford refused to comment (see page 21), general sentiment among NCTA



Vincent Wasilewski

members was one of jubilation at the somewhat unexpected victory in the CATV copyright case.