

originally would have restricted CPB from passing through more than 50% of its total funds. It now directs CPB to pass through "at least 60%" of its funds. Last year, CPB passed through about 58% of its funds in direct grants.

Schmitt's last amendment would require CPB board members to attend at least 50% of its meetings in a calendar year, or forfeit their seats. The President would replace any member who failed to comply.

Senator Howard Cannon (D-Nev.) offered an amendment to restore the matching principle to the government's awarding of funds to public stations. Goldwater's bill had eliminated the match on the grounds that government appropriations have not met the matching formula since 1977.

Although Schmitt argued vigorously against the amendment, saying the match is "unrealistic" and "an anachronism," the committee passed it by a voice vote of 8 to 2. Part of Goldwater's amendment had contained a provision to allow CPB to provide stations with "incentives" for raising additional funds. These incentives were intended to replace the match, but Goldwater accepted Cannon's later amendment, saying it would do "no untold damage" to the proposed legislation.

On a recommendation by Ford, the committee's final report on the bill will contain language instructing CPB to give public radio "its fair share" of federal support. Once that report is completed, the bill will go to the Senate floor.

More Abscam tapes cleared for broadcast

Federal appeals court rules that taped evidence used in trial of John Jenrette (D-S.C.) can be used by broadcast media

For the second time in two weeks—and the third time overall—a federal appeals court has held that the networks may copy and broadcast video and audio tapes entered as evidence in an Abscam trial. Last week the tapes involved were those played in the bribery trial of former U.S. Representative John Jenrette (D-S.C.). Broadcast of the tapes, the court said, would serve a significant public interest.

The U.S. Court of Appeals in Washington overruled a district court's decision prohibiting ABC, CBS and NBC from copying and playing the tapes, which were made by Federal Bureau of Investigation agents in their Abscam investigation. The tapes showed Jenrette meeting twice in a Washington townhouse with government agents who posed as representatives of an Arab sheik and offered him a bribe. Jenrette was convicted of taking a \$100,000 bribe to sponsor a private immigration bill for the fictitious sheik.

Jenrette had opposed release of the tapes to the networks on the ground that the broadcast would prejudice his rights in

the event his efforts to win a new trial were successful. (At one point on the tape he is seen and heard saying, "I have larceny in my blood.") The lower court agreed with Jenrette's opposition: It held that "the potential damage in the event of release of the tapes outweighs any benefit to the public if the tapes are released."

The three-judge panel of the D.C. circuit, however, concluded otherwise. It held that the possible danger to Jenrette's right to a fair trial—assuming he wins a new trial—is slight. But the public interest benefit of releasing the tapes for broadcast, the court said, would be considerable, in terms of offering the public insight into the behavior of Jenrette as well as into the criticized actions of the FBI, which has been accused by Abscam defendants of entrapping them.

"This case involves issues of major public importance—a high government official has been charged with, and convicted of, betraying the public trust, and law enforcement agencies have been accused of employing tactics which subvert the constitutional rights of the citizenry," Judge George E. MacKinnon wrote for the court.

"Thus, although the public's First

Amendment right of access to the trial itself was fully respected in this case, and although the case was reported by the press and broadcast media, we believe that following the trial there remains a legitimate and important interest in affording members of the public their own opportunity to see and hear evidence that records the activities of a member of Congress . . . as well as the FBI."

The quoted material was from the opinion of the U.S. Court of Appeals for the Second Circuit affirming a lower court's decision to release tapes played at the first Abscam trial, in New York, last year. MacKinnon's opinion also recalled the opinion of the appeals court for the Third Circuit, in Philadelphia, that was issued a week earlier and reversed a lower court's decision to bar release of the tapes (BROADCASTING, April 27). As in that opinion—released too late to be cited in MacKinnon's—the court held that the tapes are encompassed by the presumption in favor of access to judicial records. "In sum," MacKinnon said, "we conclude that the instant facts present a strong case for recognizing the common law right to inspect and copy judicial records."

Interpreting the copyright act

Two court cases brought by New York Mets and WGN-TV test ownership of rights in satellite feeds to cable

Doubleday Sports Inc., as owner of the New York Mets baseball team, contends it can control the rights to transmit to cable television systems throughout the country the telecasts of Mets games carried by WOR-TV New York. But when it made that point in a telegram to Eastern Microwave Inc., which is authorized by the FCC to operate as a common carrier and to retransmit WOR-TV signals by satellite, Doubleday got an argument, which is now being aired in a U.S. district court in Syracuse, N.Y.

This is not the only case stemming from FCC certification as common carriers of companies that rent satellite time to retransmit television signals to cable systems throughout the country. There is another, in a U.S. court in Chicago, that raises a problem not even many of those who opposed such FCC authorizations could have foreseen. It involves WGN-TV Chicago's complaint against United Video Inc. It's not that WGN-TV objects to the retransmission of its programs; rather, it objects to United Video's "stripping" teletext material from the vertical blanking interval and substituting material of its own, the Dow Jones business news service. WGN-TV is seeking a court order to prevent United Video from continuing the practice.

At issue in both cases is the question of whether the carriers are guilty of copyright infringement. The carriers say no—that they are within the exemption of the Copyright Act of 1976 that applies to

passive carriers. Whichever way the courts rule, at least some legal uncertainties left by the authors of the law and by the FCC are likely to be resolved.

The Doubleday case seems more forthright. Doubleday has sold television rights to Mets games to WOR-TV, and has warned Eastern it will be subject to a copyright infringement suit if it continues to retransmit telecasts of the games. Doubleday, in a letter to Eastern, said the telecasts would be "fixed," that is, recorded on transmission, and, therefore, copyrighted in accordance with the existing law.

That was last month. Eastern Microwave's response was to ask the U.S. district court for a declaratory judgment that delivery of the games does not constitute copyright infringement. Eastern Microwave has been delivering WOR-TV telecasts, including those of the Mets games, since 1965, initially by microwave repeater network and since 1979 by satellite. It says it delivers the WOR-TV signal to more than 600 cable systems serving more than 3,500,000 homes. All told, Eastern Microwave delivers the WOR signals of 16 stations to some 675 systems nationwide.

And since 1978, Eastern Microwave told the court, the systems it serves have been paying royalties into the fund created by the Copyright Act. Doubleday, it notes, is one of the copyright owners entitled to payment from the fund.

Eastern Microwave's argument that it is exempt from royalty payment is based on Section 111 (a)(3) of the Copyright Act. That section says that the secondary transmission of a primary transmission embodying a performance or display of