

Supreme Court last week rejected request of Palo Alto, Calif., to review district court decision holding that city's cable franchising requirements were violations of cable operator's First Amendment rights. Court said it lacked jurisdiction. Jurisdictional question stemmed from Palo Alto's direct appeal to Supreme Court. Law allows direct appeal when lower court declares federal statute unconstitutional in proceeding in which federal government is party (BROADCASTING, Dec. 21, 1987). City contended that decision undermined constitutionality of Cable Communications Policy Act of 1984 and said Justice Department became involved in case when it gave court its views on Act's constitutionality. In his September 1987 decision, District Court Judge Eugene Lynch held that provisions requiring cable system to provide leased and noncommercial access channels and universal service and to build and maintain a state-of-the-art cable system were violations of First Amendment. In earlier decision, he declared unconstitutional city's determination to grant only one franchise.

NCTA urged Supreme Court last week not to take up federal appeals court decision generally affirming FCC's "effective competition" standard. Standard says, in essence, that cable systems in communities served by three television stations are subject to effective competition. Under Cable Communications Policy Act of 1984, system subject to effective competition cannot be subjected to local rate regulation. Connecticut and several other parties had petitioned high court for certiorari.

FCC won't make its annual appearance before Senate appropriations subcommittee that oversees agency as it usually does when Congress begins its budget process. Subcommittee is implementing new process. Because of time constraints, Chairman Ernest Hollings (D-S.C.), also chairman of Commerce Committee, is limiting number of agencies that will testify. Administration has recommended FCC receive \$104.7 million for fiscal 1989. Subcommittee spokesman told BROADCASTING that Hollings wanted to narrow hearings to "big issues." Traditionally, subcommittee holds roughly 14 hearings (this year they have scheduled six) before voting on appropriations package that includes funds for, among others, Commerce, State and Justice Departments as well as FCC, Federal Trade Commission and United States Information Agency. Like FCC, neither FTC nor USIA will address subcommittee. Idea of skipping an appearance before Senate was fine with FCC, commented an agency spokesman. It will be business as usual in House, which will hear from agency this Thursday, March 3.

Season to date, ABC, replete with its February winter Olympics coverage, continues its stronghold on second place in prime time household ratings. Nielsen figures supplied by ABC through Thursday night, Feb. 25, show following results: NBC, 16.3/27; ABC, 14.0/23, and CBS, 13.5/22. For first 13 days of prime time Olympic broadcasts, ABC averaged 19.2/30. Buoyed by Olympics,

ABC is leading February sweeps in both Nielsen and Arbitron Through Feb. 25 in Nielsen, which has its sweeps period from Feb. 4 to Mar. 2, ABC is on top with 17.2/27 followed by NBC 16.3/25, and CBS, 13.7/21. Arbitron's ranking in sweeps, which runs from Feb. 3 through Mar. 1, is similar: ABC, 17.1/26; NBC 16.2/25 and CBS, 13.6/21.

Metropolitan Broadcasting, New York-based radio group operator, reached agreement late last Friday (Feb. 26) to sell WMCN-FM Detroit to Infinity Broadcasting, also New York-based radio group for \$23 million cash. Morgan Stanley & Co. represented Metropolitan in sale.

Comparative renewal challenge of CBS O&O WBBM-TV Chicago was designated for hearing last week, after CBS motion to deny Center City Communications' challenge (because of improper public notice), was denied. Motions to enlarge issues are due 30 days after publication in Federal Register (sometime next week) Center City will detail charges against station then. FCC chief administrative law judge, Thomas B. Fitzpatrick, has designated ALJ Joseph Stirmer to hear case.

Picture on who will hold **top board seats for NCTA** following spring convention **was coming into focus** last week. It is now expected



Press praise. The National Press Foundation presented its annual awards at a dinner in Washington last week. Those honored were (l-r): Richard A. Oppel, editor of the *Charlotte, N.C., Observer*—the George D. Beveridge Jr. editor of the year; R.E. (Ted) Turner, chairman and CEO of Turner Broadcasting System—the Sol Taishoff award for excellence in broadcast journalism, and Fred W. Friendly, chairman of broadcast program at Columbia University, and former president of CBS News—NPF award for distinguished contributions to journalism.

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Turner's best argument may be that it will not cost much. Because of its other cable programming services (CNN, CNN Headline News and superstation WTBS-TV Atlanta), Turner said, TBS already has the management, sales force and technical facilities needed to create and market another cable network. TBS even has a transponder on Satcom III-R ready to go, he said. CNN is now using the slot for backhauling news. And because of its extensive film libraries, he said, it already has the programming that will be the guts of TNT. He estimated that it will take \$40 million in capital to see TNT through its first two years of operation. According to Turner, in its first years of

operation, TNT will program mostly movies drawn from TBS's MGM, RKO and Warner collections and documentaries. WTBS has several documentaries in the works that could be diverted to TNT over the next two or three years, he said.

Turner said TNT would also serve as a vehicle for original dramatic programming produced with budgets "as high or a little bit higher" than the budgets for the broadcast networks. Turner said he will pay for quality even if it means "we can do just one a month or one every two months.

"We couldn't afford at the start to do anything like *War and Remembrance*," Turner said. "But we could do something like a four-hour mini-series or a two-hour made-for-television movie.

"We would do everything we could to get on the cover of *TV Guide* and create the perception that if you don't have basic cable then you are really missing something in the dramatic programming area."

Turner hopes also to bring sports and "major television events" like Miss USA and the Academy Awards to TBS. TBS's new two-year television rights deal with the National Basketball Association, he said, allows TBS to shift the games from WTBS to TNT as soon as TNT reaches 30 million cable homes, "which it could conceivably do by the start of the basketball season next year if we can go ahead and get it started." TNT would bid for the NBA championship series or at least a part of it when it becomes available in two years, he said.