Rule of sevens. Turner Broadcasting System has come out in opposition to the FCC's proposal to relax or eliminate its rule of sevens limiting broadcast ownership to seven AM's, seven FM's and seven TV's (no more than five VHF's). In late comments at the FCC, Turner said the "likely" effect of the proposal would be to concentrate program sources, with independent producers being replaced by "a few, newly invigorated, vertically owned" group owners. "The total number of voices able to speak—the core of the diversity principle—will be reduced significantly," Turner added. "Balanced against the commission's vague and suspect perception of public benefit from the rule change is the distinct probability that the commission's action will increase concentration over the vital exchange of information and ideas. It will likely reduce the discretion of individual licensees and further increase the difficulty that independent programers with little or no station ownership will have in selling programs to a national audience."

not in compliance with the [FCC's] rules, such provisions are without basis in law and invalid. Under such circumstances, local authorities should not collect, and cable systems should not pay, fees in excess of 3% of gross revenues."

James McKinney, chief of the FCC's Mass Media Bureau, at a press briefing last Monday, made clear his concern about the effect of excessive fees on cable systems. "If you load down interstate commerce with fees, you begin to restrict that interstate commerce," he said. In the case of cable (a specific type of interstate commerce), he said, "if you get the fees high enough, there won't be any cable."

Despite his concern, however, McKinney said the FCC doesn't plan to police the situation. "I don't plan to do anything . . . unless I have some complaints from [cable operators] and so far I have no complaints." The only way to enforce the franchise-fee cap, he noted, is through the courts. Either the FCC has to take the offending city to court or the cable system does, he said. He suggested, however, that many cable systems that are overpaying may not complain or take legal action for fear they will upset the regulatory bodies that will one day determine whether their franchises should be renewed. John Woodbury, vice president of research for NCTA, agreed: "If I were a cable operator, I would be scared as hell to point the finger at the franchising authority."

Although the public notice said the franchise fee problem was "substantial" and McKinney said it was "considerable," one of the FCC staffers who checked up on the NCTA staffers had a radically different view. There is "very substantial compliance on a massive basis and I think that is very encouraging," said the FCC's Angela Green. If the Internal Revenue Service did as well, she said, it "would be real happy." That most cable systems and cities are voluntarily following the rules "validates" the FCC's wholesale deregulation of the cable industry over the past several years, she said.

In documents supplied to the House Telecommunications Subcommittee, NCTA claimed that 16 (22%) of the 74 cable systems it surveyed were overpaying franchise fees to 67 municipalities. But after getting a copy of the survey from NCTA and calling up the 16 systems or their Washington attorneys, the FCC could confirm that only seven systems were overpaying 37 municipalities. Nine of the systems (and 17 of the municipalities they serve) that the NCTA said were in violation of the rules, the FCC decided were not in violation. The FCC could not come up with enough information from its survey to make determinations on the remaining 13 municipalities, which were served by two systems that were otherwise in compliance.

In its public notice, the FCC seems to have walked into the statistics maze and lost its way. The public notice said, based on the FCC review of the NCTA survey, "it would appear that approximately 4% of the cable systems in the United States are paying franchise fees in excess of that authorized under the commission's rules." McKinney used the 4% figure to extrapolate that between 200 and 250 cable systems are violating the rules. But the FCC's own figures (seven systems out of 74) suggest, if anything, that more than 9% of the nation's 5,900 cable systems or around 530 systems are guilty. NCTA's Woodbury said the FCC probably confused municipalities with cable systems. Indeed, the FCC results show that 37 of the 812 municipalities contained in the sample were in violation and that translates to 4.5%. Woodbury said he avoided drawing any conclusions or working up any percentages on the number of cable systems in violation because he didn't feel his sample (74 of 5,900 systems) was large enough. He said he does believe his sample of municipalities (812) was large enough to produce valid results, although he said he didn't know how many franchising municipalities there are.

Woodbury explained the discrepancy between NCTA and FCC figures as "part of the methodology about which reasonable men might differ." The FCC, for instance, decided to count municipalities that were collecting 5% fees, but had a waiver request pending as in compliance, he said, while the NCTA did not. Woodbury also felt that it was unfair that the FCC checked all the systems that the NCTA said were not in compliance, but ignored the 58 the NCTA said were in compliance. If the FCC had scrutinized them as well, he said, it might have found more systems and municipalities not in compliance. Woodbury admitted that his sample was not scientific, but added that it was his "sense that it was not a bad sample at all."

According to the public notice, "any interested party (usually the city)" may petition the FCC for the franchise fee waiver. "The petition should state the requested relief, and it should contain full supporting documentation, together with an affidavit to verify any factual allegations."

In the petition, the cable system must certify that the requested franchise fees would not interfere with federal regulatory goals for cable and the municipality must "submit a detailed showing containing its proposed regulatory plans to utilize the total anticipated revenue from the franchise fee exclusively for a local cable television regulatory program."

The petition will be granted, the notice said, only if it's clear that the fees are going to be used for "legitimate" regulatory expenses. "Cable television franchise fees may not be used to increase the general revenues of a locality."

The notice also spelled out what would be counted as part of the franchise fees and what would not. Money for equipment, training or other goods or services that benefits everybody including the cable operator is "not considered part of the fee," it said. But money spent for goods and services that constitute a " 'payment-in-kind' benefitting only a limited, distinct group of users" should be taken into account when calculating the franchise fee, it said. "These 'payments-in kind' might be, for example, studios and equipment packages solely for the use of access users," it said, or something "unrelated" to cable service such as fire detection equipment outside the cable headend.

In a prepared statement, NCTA President Tom Wheeler called the FCC's findings "proof of NCTA's contention that some cities are violating the FCC's limits on franchise fees," which protect consumers from "excessive hidden taxes." It underscores the need for the passage of H.R.4103 that would establish a national cable policy, he said. □

NAB, NCTA lend support to First Amendment cases

The National Association of Broadcasters and the National Cable Television Association have filed friend-of-the-court briefs on behalf of their respective members in separate cases that raise First Amendment ques-

Cellular settlements en masse. Applicants for 51 of the nonwireline cellular radio franchises in markets 31 through 90 last week announced that they have made settlement agreements. In a filing at the FCC, the parties—which include subsidiaries of Metromedia, MCI Communications, Western Union and American Mobile Communications Corp. of America—said copies of the various agreements would be filed at the FCC by March 22.

Under the agreements, the parties in each market will designate a surviving applicant, which will manage the presentation and prosecution of its application under the direction of the partnership as a whole. The remaining parties to the agreement will then request that their applications be dismissed—if the FCC approves the settlement, and the surviving applicant receives at least the same number of "draws" in a lottery as there are settling parties in the market. All that is contingent on the commission adopting a cellular lottery mechanism.