

mission to redraft rules that would meet constitutional muster. And the NAB filing provided some clues to the type of new rules it and its co-signers would consider acceptable. "Though proposing the text of final rules is unnecessary and premature prior to the issuance of a notice, new rules would require on-channel carriage of local signals in their entirety, on the basic tier and without charge to the station, subject to specific guidelines provided by the court decision," NAB said.

The NAB also said the appellate court's opinion served "as a kind of traffic report on pitfalls to be avoided" on the way to new rules. For starters, NAB said, the FCC must have an empirical, not merely intuitive, basis for the rules. "That is precisely what a notice of proposed rulemaking would yield," NAB said. Also, the NAB said the court had felt the former rules were not sufficiently tailored to meet their goals. And the NAB provided some examples of how new rules could be drafted more narrowly and flexibly to accommodate the court and to

afford cable programmers greater access to cable systems.

As one example, the NAB said that systems with few subscribers or "near saturation" could be exempted from local carriage requirements. "Or, the requirements could cease to apply at a certain point," NAB said. "Very small systems could be exempted, and/or local carriage requirements could be limited to a flat percentage of the total channel capacity for some or all systems; which signals to carry under such a 'cap' could be left to the operator's discretion. Features such as exemption of small systems, must-carry 'caps' and affording cable operators discretion where appropriate within the framework of carriage requirements could meet the court's concerns over undue intrusion upon cable operators' discretion and cable programmers' access to channels."

The new rules, according to the NAB, also could limit the extent to which cable systems would be required to carry stations affiliated with the same commercial or non-commercial networks. "Rules could pro-

vide, for example, that no more than one or another number of signals affiliated with each network need be carried, at least by smaller systems," NAB said.

A rule also could be based upon mileage or other "simple, objective" criteria so it could achieve FCC objectives while relieving cable operators from the 'overbreadth' found by the court in the former rules, NAB added. "This could perhaps include modification of the commission's former approach to hyphenated markets," NAB said.

"As to some stations formerly entitled to carriage but which become 'may carry' under narrowed rules, consideration could be given to continuing to define them as 'local' for cable copyright royalty purposes, but not for purposes of mandatory carriage," NAB said. "Cable operators could then carry them at their option without incurring distant signal royalty liability. The result would be creation of an incentive for carriage of stations with a nexus to the local community but which fall outside the redefined 'must-carry' zone," NAB said. □

NAB still up in the air over joint radio convention

Board will review opinions solicited about last month's radio show before deciding on another with NRBA

It's been a month since the National Association of Broadcasters and the National Radio Broadcasters Association wrapped up their joint Radio Management and Programming Conference in Dallas, and still NAB has not decided whether to continue that partnership. Meanwhile, NRBA officials are moving forward with plans to hold a convention next year in New Orleans, regardless of what NAB decides.

"We're going ahead; we're going to do it," said NRBA President Bernie Mann. "If they want to have their own meeting," Mann said, "they have the right to leave." Mann hopes the NAB will continue to support joint sponsorship of the meeting.

Mann said "all the machinery is in place for a joint convention," and NRBA has every reason to believe NAB will be there. "I haven't had a call saying they don't want to dance with us," he said. "Either way we're going to dance."

NAB's decision to reconsider its role in the radio convention stems in part from NRBA's push in August to create a "super" radio association. Many NAB radio board members vehemently opposed the idea and called for NAB to withdraw from next year's conference (BROADCASTING, Aug. 19).

The relationship between the two groups has always been strained, and some NAB directors opposed the partnership from the start.

Indeed, some NAB directors feel their association has been contributing the lion's share of effort and manpower to the RMPC without realizing commensurate benefits. And Mann's antiadvertising-agencies speech at the conference (he characterized them as "snake-oil salesmen" [BROADCASTING,

Sept. 16]) also contributed to NAB's reluctance to participate in another joint venture. NAB officials feel their association may have suffered some backlash from the speech.

With or without NRBA, NAB plans to hold a radio conference. First, however, said NAB President Eddie Fritts, the association wants to make a fundamental assessment of this year's convention. NAB has assigned its research department to survey industry reaction to the RMPC. Analysis of the data is expected to be completed by the end of this month. NAB's executive committee will take up the matter at its meeting Oct. 29.

Fritts said the NAB has a number of concerns: Is the conference enhanced by NRBA participation or would it be more successful with not only NRBA but other organizations

involved? He said the conference may be "getting away from its original programming intent."

Fritts admitted that the super radio proposal was "a part of" NAB's decision to re-evaluate the meeting. "But it certainly was not a major part of it." He said NAB "wants peace," but "we have to review our circumstances." Some sources, however, question NAB's motives. "They have a belief that by keeping NRBA out of the convention it will die and go away," one source said.

The ultimate decision rests with the radio board, said NAB Joint Board Chairman Ted Snider. Snider said a decision will be issued after the executive committee looks at the survey results. "Our board is very democratic. We don't do things precipitately," he said.

It may not be easy to dissolve the relation-

Gannett discloses what it wants to keep

The FCC has accepted for filing Gannett Co.'s applications for its \$717-million acquisition of the Evening News Association. In its applications, Gannett cites a seldom-used FCC procedure—reportedly included in the commission's 1975 newspaper-broadcast crossownership ruling—to support retention of its WCZY-AM-FM Detroit and ENAs *Detroit News* for up to four years. Gannett essentially argues that the rules say a broadcaster who buys a daily newspaper in his market does not have to divest until the license of the station expires. Thus, Gannett contends it may retain the newspaper and WCZY-AM-FM until Oct. 1, 1989, when the current licenses for those stations run out.

Otherwise, Gannett is seeking a one-year waiver of FCC ownership restrictions to sell ENAs WALA-TV Mobile, Ala., and KOLD-TV Tucson, Ariz. Those temporary waivers of FCC ownership restrictions may be necessary since WALA-TV's signal overlaps Pensacola, Fla., where Gannett publishes *The Pensacola News Journal*. KOLD-TV's signal overlaps with the signal of Gannett's KPNX-TV Mesa (Phoenix), Ariz., and Tucson, where Gannett publishes the *Tucson Citizen*.

Gannett also is proposing to sell ENAs WWJ(AM)-WJOL(FM) Detroit by the day after closing of the Gannett-ENA deal. In addition, it's proposing to sell by the same time ENAs KTVY(TV) Oklahoma City, where Gannett already owns KOCO-TV.

Petitions to deny are due Oct. 28.