

COURT NARROWS SCOPE OF CABLE CHALLENGES

District court in Washington will hear oral arguments on must carry; puts rate regulation and program access on slower timetable; schedule for retransmission-consent consideration still unclear

By Randy Sukow

The must-carry provisions of the 1992 Cable Television Consumer Protection and Competition Act remain on track for a rapid March 1993 settlement by the U.S. District Court in Washington and possible Supreme Court review following a decision by a three-judge District Court panel.

By a 2-1 vote, the panel ruled last Tuesday (Dec. 15) it had discretionary jurisdiction to review all 17 sections (out of a total of 28) of the Cable Act currently under challenge from five cable industry plaintiffs. At the same time, it exercised its discretion and decided to consider only those sections of the act dealing with must carry (Sections 4 and 5).

The three judges will meet again on March 4, 1993, to hear oral arguments on must carry. Because four of the five cable plaintiffs argue that must carry and retransmission consent are linked and unseverable provisions, retransmission consent could also receive the same swift Supreme Court consideration.

Provisions besides must carry, including rate regulation and program

access, are now likely to move on a slower timetable through the FCC and D.C. Court of Appeals. As the administering judge for the panel, District Court Judge Thomas Penfield Jackson was left with the responsibility to decide further district court involvement with non-must-carry arguments. Immediately after last Tuesday's decision, Jackson scheduled a hearing for Friday (Dec. 18) to decide plaintiffs' requests for preliminary injunctions against those provisions (see "Top of the Week").

Last week's debate centered on congressional intent in the Cable Act's "Judicial Review" provision (Section 23), which mandates that a three-judge district court review all constitutional challenges to must carry and that any finding that must carry is unconstitutional must be reviewed by the Supreme Court within 20 days after the panel's decision. But Section 23 says nothing about the panel's jurisdiction over the rest of the act.

"I think you have the power to take this case and I think you have the power not to take it," said Allan Tuttle of Patton, Boggs & Blow, representing Discovery Communications. (Discovery and Time Warner are the only plaintiffs challeng-

ing cable provisions other than must carry and retransmission consent. The other plaintiffs are Turner Broadcasting System [TBS], Daniels Cablevision and the National Cable Television Association.)

The most likely scenario for March 4, as of last week, is that the panel will hear arguments against must carry from the five plaintiffs and a direct challenge to retransmission consent from Daniels Cablevision. The panel will then rule on must carry; Jackson will rule alone in the Daniels retransmission case.

But the panel may choose to rule on retransmission consent as it relates to must carry in the TBS, NCTA, Time Warner and Discovery suits. "These sections are quite interrelated" and severance of them would be contrary to the will of Congress, Tuttle claimed.

If those four plaintiffs win their must-carry battle, their case is structured to topple retransmission consent with it, said TBS attorney Bruce Sokler of Mintz, Levin, Cohn, Ferris, Głovsky & Popeo. If they lose, "our Section 6 [retransmission consent] claim drowns with our Section 4 claim," he said. ■

SCHUMER WANTS VIOLENCE RATING FOR TV SHOWS

Representative suggests system based on that used for films

By Geoffrey Foisie and Randy Sukow

House Crime and Criminal Justice Subcommittee Chairman Charles Schumer (D-N.Y.) last week proposed special warnings or a rating system—perhaps to be fashioned on the Motion Picture Association of America's movie rating system—to alert parents to the level of violence on broadcast and cable TV shows.

Schumer praised ABC, CBS and NBC for last week's agreement on voluntary standards to curtail network TV violence (BROADCASTING, Dec. 14), but said more is needed. Parents

could be told "explicitly that this violence may make our society more violent, your child more violent," he said during a subcommittee hearing in New York last Tuesday (Dec. 15).

Schumer did not put much flesh on the rating-system proposal. His intent, a Schumer aide said, was mainly to present the idea for industry discussion with the possibility of workable details later.

At first blush, TV industry witnesses were not optimistic about the idea. "I don't know many advertisers that will say: 'Gee, this is the kind of environment for me to advertise in,'" said Showtime Chairman Tony Cox. Such

a warning might be difficult for advertiser-supported networks to manage, he said.

But Cox said that cable networks, working with the National Cable Television Association, are discussing other ways to provide information on violent content: "We are discussing that right now...to see if more information, better information, advisories, perhaps some recognition in the form of PSA's that violent behavior can come out of this [and] that we have to exercise greater judgment. I don't think that is an inappropriate way to go."

Cox's very presence at last week's