

Paramount: Let the bidding begin...again

QVC court victory gains it a level playing field

By Geoffrey Foisie

Sumner Redstone's strength proved also to be his Achilles heel. His 80% control of Viacom, said the Delaware Supreme Court last week, meant that a Viacom-Paramount merger was essentially a transfer of control of Paramount to Viacom.

That, said the court, heightened the duty of Paramount's board of directors to maximize the value of the Paramount shareholders' stock. The judges concluded that the board had not made a "reasonable" effort to consider QVC Network's counteroffer to Viacom's merger proposal.

But Viacom is not necessarily out of the picture. It is possible that the current state of competing tender offers will turn into a Paramount-controlled auction in which the board can consider factors other than mere dollars. And Viacom could raise its offer again. As matters stood Friday, the QVC offer of roughly \$10.5 billion for Paramount was \$1 billion more than Viacom's proposed merger offer.



QVC's Diller



Viacom's Redstone

If Viacom Chairman Sumner Redstone decides not to continue upping his bid, his company will not walk away with a stock option for 23.7 million Paramount shares. That provision of the Viacom-Paramount merger agreement, worth hundreds of millions of dollars to Viacom, was invalidated by Delaware Chancery Court and also upheld last week by the three-judge appellate panel. Although neither court ruled on a \$100 million fee that Paramount agreed to pay Viacom if their proposed merger broke up, that

sion could still be challenged by QVC in court.

Redstone's own trading of Viacom stock leading up to the initial Sept. 12 merger proposal may now be the subject of government investigation, according to the *Wall Street Journal*. The report indicates that another company in which Redstone has influence, WMS Industries, was buying Viacom stock following the merger announcement, possibly boosting Viacom's stock price and thus the value of its bid for Paramount.

Television played a role last week beyond being one of the Paramount businesses sought by QVC and Viacom. The Thursday Delaware court proceedings were televised on Court TV and CNBC, and the changing price of Paramount stock during the day apparently reflected the market's reaction to its perception of the court proceedings. After opening at 79¼, the stock jumped 1½ when the three-judge panel began firing pointed questions at Paramount's attorney. The stock closed Thursday at \$82. ■

Court upholds fairness doctrine repeal

Broadcasters and the FCC were handed a "big victory" last week when a U.S. appeals court upheld the commission's decision to repeal the fairness doctrine and rejected the argument that the doctrine had been codified by Congress.

"We conclude that Congress did not codify the fairness doctrine in 1959," wrote the court. Fairness doctrine opponents say that this will stand as a warning to Congress and special interest groups that might want to revive the doctrine, which had been upheld in the 1969 Red Lion case. The court's actions could further dampen congressional efforts to pass legislation codifying the doctrine.

The decision came from the U.S. Court of Appeals for the 8th Circuit in St. Louis. In a 7-5 ruling, the judges upheld an 8th Circuit Court decision that last year affirmed the FCC's repeal of the doctrine. The National Association of Broadcasters, CBS and the Radio-Television News Directors Association were among those filing briefs in the case.

The case stemmed from an FCC decision to deny a complaint from the Arkansas AFL-CIO against KARK-TV Little Rock, charging that the station covered ballot

issues unfairly. The FCC, voting 3-2, said that fairness did not apply to a 1990 ballot referendum, since the doctrine was repealed in 1987. The AFL-CIO and Media Access Project challenged the FCC's action.

RTNDA President David Bartlett said the decision is "good news" for broadcasters and suggested the courts were "finally listening." Bartlett pointed out the judges also were suggesting that the doctrine might not be constitutional.

The St. Louis appeals court said developments since 1969 "make it likely" that the Red Lion case "would be reconsidered." The court noted that re-examining Red Lion is the business of the Supreme Court. "But developments subsequent to Red Lion appear to at least raise a significant possibility that the First Amendment balance struck in Red Lion would look different today."

NAB was equally pleased with the decision. "We also are pleased that several judges specifically recognized that marketplace developments over the past 25 years raise significant questions about the constitutionality of the fairness doctrine," said NAB President Eddie Fritts. —KM