

DOWNFIELD BLOCK FOR LONGER NEWS

CBS asks selective waivers for PTAR

stake. We look to Congress to rectify this inequitable situation. Broadcasters and copyright holders believe that all should recognize that it is a fundamental right for the owner of a product to control its sale and distribution. We are hopeful that the Congress, through the copyright legislation presently being debated, recognizes this inequity and will right the balance. The issue becomes increasingly important as more and different technologies are introduced and vie for audience attention."

Erwin Krasnow, NAB general counsel, however, caught a glimpse of a silver lining in the cloud. He contended that the Supreme Court action strengthened the NAB's cases before the Congress and the Copyright Royalty Tribunal.

The repeal, Krasnow said, strengthened NAB's case before Congress because the FCC order had "ignored" and "flouted" basic contract law. According to Krasnow, the order essentially told cable operators that they were free to ignore whatever contracts broadcasters made with syndicators over exclusive rights to a program in a market.

Because the FCC order is now final, Krasnow added, the CRT was compelled by statute to launch a rate-adjustment proceeding to account for dropping the rules.

Val Pinchbeck, NFL director of broadcasting, said the NFL, too, was disappointed. Nonetheless, Pinchbeck said the NFL would continue to oppose the repeal, taking its case to the public and Congress.

District court ruling calls statute banning partial nudity 'incurably broad'; appeal probable

The sizable victory won last November in Utah by pay-cable programmers, when a federal judge permanently enjoined the enforcement of a state cable obscenity statute, was reinforced last week when the judge, Bruce Jenkins, of the district court at Salt Lake City, handed down a decision declaring the law unconstitutional. The statute, ruled Jenkins, violates both the First and 14th Amendments.

The statute prohibited cable operators from transmitting programming which described or portrayed "illicit" sexual acts and also banned nudity or partial nudity. Under Utah law, any publicly displayed sexual act is defined as illicit. The cable statute, if enforced, would have precluded the airing of films including "Kramer vs. Kramer" and "Coal Miner's Daughter."

In determining that the statute violated the First Amendment, in this particular case, the operator's right of freedom of expression, Jenkins reasoned that the law was overly broad. As explained by an assistant to the judge, "nudity alone is not obscene." Said Jenkins: "As I view the statute, it is overly broad; it is impermissibly broad; it is incurably broad." The 14th Amendment applies the First to the states.

Robert Wallace, the lawyer who litigated the case for the state's attorney general's office, was quoted last week as saying that the state "is strongly considering an appeal" to the 10th U.S. Circuit Court.

Network requests that FCC suspend rule for 13 markets in which technicalities prohibit longer form, although it doesn't say affiliates want it; petition avoids frontal attack on PTAR, steers clear of 7:30-8 p.m. slot

CBS began notifying affiliates last Friday that it was filing with the FCC a plan for a one-hour evening newscast that would be broadcast prior to prime time in all but 13 markets affected by the prime-time access rule.

The purpose of the FCC filing, submitted late Friday, was to seek waivers of PTAR in those 13 markets so that CBS-TV affiliates there would be free, like all other affiliates, to carry the expanded newscast if they chose to.

The expansion is scheduled for the first quarter of 1983. That is the target time announced by CBS last fall after a reportedly tense meeting with its affiliate board, many of whose members protested a news expansion on grounds that it would encroach on local time in violation of PTAR (BROADCASTING, Nov. 23, 1981).

The new plan seeks to overcome that problem by scheduling the hour news before prime time in all time zones except Eastern. It would run at 6-7 p.m. in the Pacific time zone and at 5-6 p.m. in the central and mountain zones. In the Eastern zone it would be fed at 6:30-7:30 p.m., with the last half-hour thus falling into prime time.

PTAR, which applies only to affiliates in the top 50, already permits stations to carry network news in the first half-hour of prime time if a full hour of continuous locally produced news is immediately adjacent. CBS says 15 of its 28 top-50 markets in the Eastern zone already carry one hour or more of news immediately preceding the *CBS Evening News*.

The 13 that don't—and therefore would need PTAR waivers to carry the expanded CBS news—are affiliates in Cincinnati, Columbus and Dayton, Ohio, all of which carry an hour of local news but bracket it in half-hour segments around the network news, and Cleveland; Miami; Buffalo, N.Y.; Orlando, Fla.; Kalamazoo, Mich.; Spartanburg, S.C.; Providence, R.I.; Louisville, Ky.; Charleston, W. Va., and Norfolk, Va., all of which carry a half-hour of local news preceding the network news.

In asking for waivers for these 13 markets, CBS told the commission that its petition did not pretend to speak for the view of these 13 stations as to whether the evening news should be expanded, whether they would carry an expanded news or whether they support the petition. The only purpose of the petition, CBS said, was to make sure that all of its affiliates in the top-50 markets would be free to

exercise their independent judgments regarding clearance of the expanded news.

The petition also emphasized "what CBS is *not* seeking." It is not seeking a change in the type or amount of network programming now permissible in prime time, it said, and thus is neither attacking nor challenging PTAR. (In a footnote, the petition cited CBS's contention in comments on PTAR itself that the rule has failed to achieve FCC objectives and after an appropriate rulemaking proceeding should be abolished, but the petition argues that the requested waivers do not relate to—and can and should be granted without regard to—that broader review of the rule itself.)

In no way, CBS emphasized, does the expanded news plan encroach on the 7:30-8 p.m. NYT access time period.

Gene F. Jankowski, president of the CBS/Broadcast Group, said that as announced after the affiliate board meeting in November, "CBS is proceeding with its planning for the expansion of its early-evening news in the first quarter of 1983. This request—if granted—would give CBS affiliates the freedom to choose, based solely on the individual station's judgment, whether to carry a one-hour evening news service. FCC approval is essential to our ongoing planning for an expanded evening news."

The petition itself emphasized that the FCC historically has acted to ease PTAR inhibitions on network news, and that there has been a public demand for expanded news coverage at both network and local levels. The networks have increased their coverage, two 24-hour cable news networks have come into being and two more are planned, CBS noted, while CBS affiliates in the top-50 markets have expanded their local news from a total of 34 hours per evening in 1971 to a total of 47 hours an evening in 1981, an increase of 38%.

Executive Director George Back of the National Association of Television Program Executives, learning of the CBS plan, issued a statement condemning it as an attempt "to use the FCC to bludgeon the stations into line." Moreover, he said, waivers erode PTAR and thus compromise its intent.

"If CBS is successful in effecting a change in what has become the traditional news period," Back said, "stations could lose half of their local news time to the networks. The real loser, however, will be the public, which will continue to receive only one and one-half hours of news, two-thirds of which will be national. The enormous demand for local news by viewers that we have seen develop in the last few years is proof that Americans are best served by stations providing local and regional news and community affairs."