its mandate on Feb. 5, and refused to grant a stay, as did Supreme Court Justice William Brennan. The commission's order does not extend the station's license; it simply authorizes RKO General to begin operating the station on March 8 until NETV meets certain conditions and is prepared to take over operations.

What's more, RKO General will not keep any profits under the new authority, if it does not prevail in its appeal. The commission said profits will be placed in an escrow account for distribution to an "appropriate charity or nonprofit broadcasting entity" if the appeals court decision is ultimately sustained by the Supreme Court. The provision parallels a suggestion RKO General itself offered in a pleading on Monday, but it was one the commission staff is understood to have already made to the commission. In part, at least, the escrow provision is intended to deny profits to RKO from a station it is now considered unqualified to operate. But in part, too, it meets NETV's concern that, if RKO General were allowed to keep its profits, it would be inclined to drag out negotiations over the sale of the station's equipment to any possible successor.

If RKO eventually loses in the Supreme Court—particularly if the case has dragged on for several months or a year—the eventual recipient of the profits could be in for a tidy windfall. Last year, WNAC-TV reported profits of more than $4.7 million.

NETV had proposed that it be allowed to operate the station while the Supreme Court appeal was pending, with profits placed in escrow and distributed to whoever ultimately emerged as the licensee. And NETV president Edward Fredkin said after the commission's order was announced that NETV might go back to the appeals court to ask it to enforce its order terminating RKO's license. He said NETV is looking at "every possibility," including the construction of its own facility.

A spokesman for RKO General said the commission action provides for "an intelligent, satisfactory method" for transferring the station, "if it should occur," and said it would "serve the interests of Boston." But he also said RKO General expects the Supreme Court to reverse the "erroneous" decision of the appeals court, "one of the worst miscarriages of justice in the history of broadcast litigation."

The commission attached two conditions to the grant it made to NETV. One was that NETV satisfy it on a question of financial qualification—a task that should prove no problem, considering the station is regarded as worth perhaps $200 million. The other was that an NETV stockholder, Theodore Jones, who is a controlling shareholder of WCRB(FM) Waltham-Boston, demonstrate compliance with the commission rule barring acquisition of radio and television stations in the same market.

In the latest action in the case that began in 1969, when Community and Dudley filed their competing applications for the Boston channel 7 facility, the commission rejected petitions of a relative newcomer to the controversy—Atlantic Television Corp., ATV, which filed an application for the license in 1980, had urged the commission to deny NETV's merger and accept other applications for the facility.

But the commission said that, "based on the case law, logic and simple fairness, we think Dudley and Community are entitled to protection against new applicants at this late stage in the proceeding." The cut-off period for competing applications closed on March 1, 1969.

ATC-Daniels partnership takes Denver cable franchise

Council votes 10-3 for Mile Hi over bids of Teleprompter and United; publicity surrounding Playboy Channel in winning bid doesn't prevent victory

Denver, America's unofficial cable capital, awarded the cable rights to its 240,000 homes last week to Mile Hi Cablevision, a joint venture of American Television & Communications, Daniels & Associates and 22 local investors. Mile Hi bested Teleprompter and United Cable, capturing 10 of the 13 city council votes.

The ease of Mile Hi's victory came as a surprise to many. "I thought it was a good chance we would have a cliff-hanger here and we would have had to go back and discuss how to get out of it," said Denver City Council President William Roberts just after the vote was over last Monday.

Mile Hi projected revenues in year 15 of the franchise to be $94 million, 5% of which would go to the city. Total revenue over the life of the franchise is projected to be $876 million. Mile Hi survived an avalanche of negative publicity regarding its plans to offer the R-rated Escapade/Playboy Channel pay service to subscribers to win the 15-year franchise.

Council chambers were standing room only when the three bills, one for each company, were called up in alphabetical order. Seven votes were necessary from the 13-member council to declare a winner. Mile Hi Cablevision was first up and the 10-to-3 vote brought a quick end to the drama. United could only muster three votes and Teleprompter came up empty.

United, which currently has nearly 200,000 homes under franchise in the Denver suburbs, had campaigned hard for its proposal. It had proposed a 23-month construction schedule, one year ahead of the other bidders, and the technical aspects of its proposal received the best marks from the city's consultant, the Cable Television Information Center. United also offered a 17% public stock offering at $10 per share, which was purchased by some 1,700 persons and companies. But the company's inability to get permission from stockholders to release their names (a disclosure some council members had requested), may have hurt United in the long run, observers felt.

A clearly disappointed Barry Elson, United's vice-president corporate development, said: "That clearly was not the real vote. I don't know what happened during the recess or over the weekend, but that clearly was not the real vote. The merits of the proposal were not the determining factor in the decision, and neither was the input from the community. The fact that we had the support of the key community groups was overshadowed by the historical relationships that existed and predated the franchise process."

Bill Daniels, chairman of Daniels & Associates, and a group of local investors had attempted to wire Denver in 1971, but were foiled by a deadlocked city council. A number of Mile Hi's investors were a part of that original Daniels group. "I do not think it hurts to live in the community as long as I have, almost 30 years. I'm known for my integrity ... It could have helped," Daniels said.

In its campaign to muster support for its bid, Teleprompter focused on its public trust, which would have given to the city and county of Denver a 20% interest in the system. That caused some problems for CTIC, which thought that down the line, the city council might find itself voting for a rate increase which would benefit the city, through the trust.

Teleprompter President William Bresnan commented: "We came in here, made our proposal and we lost ... There's nothing else to do ... I thought it would be a little closer." Teleprompter was the only bidder whose headquarters are not in Denver.

Mile Hi's bid included $17.5 million for local programing over 15 years, a 400-mile institutional loop, and full interactive services, including home security, shopping and banking. Daniels and ATC each are 42.5% partners in Mile Hi, with the 22 local investors, some of whom put up $100,000 initially, owning the other 15%.

Mile Hi's first tier, 50 channels, is $3.75, 64 channels cost $5.75, 78 channels $7.50, 92 channels $8.95 and full interactive "summit" service of 110 channels costs $11.45. Part of the tiering structure allows subscribers to choose among three trails (14 channels in each) of service, after the basic 50-channel tier is ordered. Each trail will include a programing mix of sports, religion, movies, etc. Should a subscriber want the 14 particular channels between 64 and 78 (trail B), he would not have to buy the tier (trail A) between 50 and 64. He would pay the 64-channel $5.75 fee, according to the proposal.

Mile Hi estimated an 18.7% rate of return for the franchise that will cost $100 million to build and take 42 months to complete. Mile Hi must negotiate a contract with the city before May 24 to complete the franchise process.