

a nationwide basis many sports events formerly carried only in a few markets or not at all.

It is naive to believe that the proposed regulations could prevent pay TV siphoning of free television programs. If pay television is to be assigned feature films under 2 years old, film suppliers would have every reason to withhold such films from free television during the 2 years following their release—and after—to realize maximum revenue from box office television. The owners of sports rights need only keep the games from free television for 2 years—nationally or in any given market—to qualify them for pay television; and in the case of specific sports events like the world's series, the real effect of the complicated regulations is to reduce the waiting period to 1 year.

If these movie and sports features are to be preemptible by pay television, the free service would tend to be limited to older movies and to sports already carried, and would be fenced off from natural development in these fields.

Finally, the free television programs most vulnerable to siphoning—like major entertainment specials and taped sports coverage—would be wholly available to pay television, endangering the continuation of free television in these distinctive fields.

Another public interest consideration relates to the portion of the public that could not afford pay television—estimated in the fourth report at 30 percent of the total population. These are the people who have the fewest privileges and opportunities and are most in need of the full entertainment and information services free television can offer. The diversion of programs to a service from which they are economically barred would be a denial of their justified expectations.

All the considerations indicate that an issue of basic national communications policy is presented on which the Commission should not act without specific congressional authorization. This has been recognized in resolutions previously adopted by this committee and by the Senate Commerce Committee. And as I mentioned before, in 1959, Chairman Harris emphasized this committee's understanding that pay television would not be authorized on a permanent basis without further action by the Congress. The fact that Congress has not acted does not justify Commission authorization of pay television, especially when there is no public demand for the service.

To summarize, the record of pay television's test operation demonstrates that it will not provide a service distinctive from free television service in any significant way. Accordingly, there is no affirmative public interest reason that would justify diversion of broadcast frequencies from free to pay television. On the contrary, there is a danger that pay television could siphon popular attractions from the free service and thus diminish the scope of service to the total public. The fourth report recognizes this danger and seeks to guard against it by a system of detailed program regulation that is bad in principle and would not be effective in practice.

While the events of the past years demonstrate that there is no public demand for broadcast pay television and it would not affirmatively serve the public interest, free television has progressively broadened its service, in programing; in the UHF expansion; and in the growth of noncommercial broadcasting. These positive developments can be impeded by broadcast pay television.