

be fully able to make the necessary adjustment for the required period in order to capture the rewards of a "box office" return.

Professional football is an apt example. At present, the typical pattern is to broadcast "away" games of local teams, and when the local team is at home, to broadcast games of other teams. The rules would permit the pay television broadcast of "home" games not carried during the preceding 2 years.

It would be relatively simple for professional football teams immediately to substitute the broadcast of "home" games on pay television for the broadcast of "away" games on free television. This would provide professional football with substantial income during the interim 2-year period while leaving no professional football on free television.

Thereafter, pay television could carry all the games, both "home" and "away" of the local team. Professional football would disappear as a free broadcast service.

This could happen even though a small minority of the present viewing public chose to subscribe to a pay-TV service. For example, 5 percent of the 60 million TV homes in America today could by the simple expedient of paying \$1 per game "outbid" the remaining 57 million.

This sport is but one example of the ultimate fate of virtually all of the most popular kinds of programs now available on free television. The argument that pay-TV would provide a beneficial supplement to free TV is a sham. All evidence available and the imperative of logic leads to the conclusion that pay-TV would seek to appeal to the greatest number of viewers to reap the maximum number of subscriptions and this it could do largely with sports and motion pictures.

That many pay-TV advocates have been willing to accept what they consider to be very restrictive regulatory proposals should be cause for deep concern. Once the camel's nose is under the tent pay-TV would seek to circumvent, frustrate, or invalidate the restrictions.

Indeed, the suggested regulations over programing raise serious questions under the first amendment. Furthermore, they are so intricate as to be unworkable and would force the Commission into a morass of administrative detail thereby compounding its already substantial administrative burden.

In short, if the Commission cannot, consistent with the public interest, authorize pay TV without such regulations, then it should not authorize pay TV at all.

In this connection, the NAB respectfully suggests that the Federal Communications Commission lacks the jurisdiction to authorize over-the-air pay television on a permanent basis.

The only judicial consideration of the subject concerned itself with experimental operations. The court never addressed itself to the question currently under consideration by the Commission, that is, permanent authorization.

We suggest there is a much broader authority for the Commission to permit experimental operations than exists for actions that would alter permanently the regulatory scheme.

I shall not attempt to go into the legislative history which led to the present Communications Act other than to stress the fact that