

Theatre Owners is a nationwide trade organization consisting of the owners of motion picture theatres throughout the United States. The Joint Committee Against Toll TV is a voluntary association which came together in 1955 for the purpose of expressing its opposition to the institution of over-the-air pay television, and which has participated in the proceedings before the Federal Communications Commission during the past 12 years concerning pay television.

It is the position of the National Association and the Joint Committee that over-the-air pay television should not be adopted as a permanent medium and we respectfully request that this Subcommittee take whatever action it deems necessary to indicate to the Federal Communications Commission that: (a) the Federal Communications Commission does not have the statutory authority to inaugurate pay television as a nation-wide permanent medium and (b) that the institution of permanent pay television would not be in the public interest.

We have filed extensive comments with the Federal Communications Commission outlining in detail the detriments to the public interest which would ensue if pay television were to be authorized. We will not repeat all of the arguments made in these comments in the time which the Subcommittee has graciously extended to us today, although we respectfully seek leave to place these comments into the record of these proceedings so that they will be available for Committee study. We wish today merely to point up the more pressing reasons why we believe that the institution of over-the-air pay television as a permanent medium would be a disaster for the American public.

I. THE FEDERAL COMMUNICATIONS COMMISSION'S CONCLUSION THAT IT HAS THE STATUTORY AUTHORITY UNDER THE PRESENT COMMUNICATIONS ACT TO AUTHORIZE PAY TELEVISION IS ERRONEOUS

The Federal Communications Commission, in its First Report on pay television in 1957 (16 R.R. 1509, 15-14 at Pars. 20-44) concluded that it possessed the statutory power to authorize over-the-air pay television on a permanent basis. Although urged to do so many times, the Commission has never reevaluated that conclusion but has adhered to it in the Commission's March, 1959 Third Report,¹ and again in the Commission's March, 1966 Further Notice of Proposed Rule Making and Notice of Inquiry. Similarly, this conclusion was not reevaluated by the Commission's Subscription Television Committee in its July, 1967 Report; the Committee merely noted the conclusion and indicated the Committee's agreement therein.² We believe that the Commission's conclusion was erroneous.

It cannot be emphasized too strongly that a system which demands direct payment of fees by the public in order to receive programs broadcast on publicly controlled broadcast facilities represents a major and drastic change in the nature of American broadcasting. Prior to the advent of pay television, commercial broadcasting had been supported solely by advertisers. There was, and is, no direct financial relationship between a listener and a broadcast licensee. The absence of this relationship is more than just a matter of commercial choice. It represents an important feature distinguishing broadcasting from public utilities, and common carriers—a distinction which was explicitly recognized by Congress when it drafted and adopted the Communications Act.³

This single fact also sharply distinguishes pay television from other changes in broadcasting which have occurred over the years, such as color television, FM broadcasting, simplexing, multiplexing and functional music operations.⁴ It also distinguishes pay television from CATV, since in CATV there is no direct

¹ 16 R.R. 154(a).

² The Subscription Television Committee consists of Commissioners Wadsworth, Lee and Cox. On July 14, 1967, the Committee recommended to the full Commission that over-the-air pay television be authorized on a permanent basis. Commissioner Wadsworth, the Committee Chairman, however, stated that, while he agreed that the issues involved should be brought to the attention of the full Commission, nevertheless, this agreement should not be construed as an endorsement of the Committee's position, upon which question Commissioner Wadsworth withheld judgment.

³ See, e.g., the remarks of Senator Broussard who, during the debates on the Communications Act of 1927, stated "radio makes no direct charges, whereas the others (telephone and telegraph) are in the business of serving the public for direct pay." 67 Cong. Rec. 12504. See also *Pulitzer Publishing Co. v. F.C.C.*, 68 U.S. App. D.C. 124, 126, 94 F. 2d 249, 251.

⁴ Although it is true that certain subscribers of functional music pay for the privilege of receiving material broadcast over the air, it is also clear that the *general* listening audience does not pay for this broadcasting. Stores, factories and buildings which desire such operations purchase them so as to provide the public in those stores and buildings with background music as an *additional* service. The public is not simultaneously *deprived* of the service.