

including such restrictions as forbidding (with limited exceptions) the presentation on pay television of movies more than two years old in general release, forbidding the presentation of "series type" of programs with interconnected plots, and forbidding the presentation of sports programs which have been on television on a regular basis for two preceding years. These types of restrictions are unprecedented in broadcast history, and there is a most serious question as to whether they are legal under the present Section 326 of the Communications Act which forbids the Commission to "censor" program material. Indeed, such restrictions have already been attacked by numerous commentators as illegal. If these commentators are correct, then the Commission is powerless to enforce the very conditions which it deems necessary to protect the free service. Clearly, the present Act gives no guidelines on this point.

We believe that the conclusion reached by the Interstate and Foreign Commerce Committee in February 1958 is still valid and should be emphasized anew. On February 6, the Committee adopted the following resolution:

"Resolved, that it is the sense of this Committee that the public interest would not be served by the granting of authorizations for subscription television operations as contemplated by the Federal Communications Commission in its First Report, adopted October 17, 1957, in Docket Number 11279, because—

"(1) it has not been established to the complete satisfaction of this Committee that authority to license such operations comes within the power of the Commission under the provisions of the Communications Act of 1934; and

"(2) such operations might lead at least to a partial blacking-out of the present system of television operations, with possible injury to such present system in particular communities, if not throughout the United States.

"Sec. 2. For the reasons stated above, it is the sense of this Committee that the Federal Communications Commission should not grant authorizations for subscription television operations as contemplated in such First Report unless and until the Communications Act of 1934 is amended so as to specifically empower the Commission to grant such authorizations."

At the same time, the Senate Commerce Committee reached a similar conclusion and voted to recommend the adoption by the full Senate of the following resolution:

"Resolved, that it is the sense of the Senate that the Federal Communications Commission should not, without specific authorization by law, authorize or permit any television licensee or agent thereof to impose a toll, fee, subscription, or other charge on the general public or any portion thereof, for the privilege of viewing television programs received over television receivers located in the home, with the exception of both community antenna systems and those programs transmitted by cable or wire or both."

We believe that similar action should now be taken.

II. THERE IS NO DEMONSTRABLE PUBLIC DEMAND FOR THE SERVICE

The concerted drive by proponents of pay television for the institution of a pay television system has now been continuing for over 12 years; the proceeding before the Federal Communications Commission started in February 1955. Yet, throughout this entire period, there has clearly been no demonstration of public demand seeking the institution of pay television. On the contrary, the only outcry has come from the entrepreneurs who seek to profit from the medium. It can hardly be contended that the public has been besieging the Commission with demands that a permanent pay television system be established.

To the contrary, in California, as this Subcommittee is undoubtedly aware, the public voted down by a decisive margin the institution of a wired pay television system in the only public referendum ever held on this question. And it is significant that only one test of a pay television system, pursuant to the First and Third Reports, has been conducted. It is at least reasonable to assume that if a real demand for such service were evident, it would be reflected in requests by numerous prospective pay TV proponents for authority to conduct experimental operations. No such public reaction has been evident.

Indeed, the Hartford and the Canadian Etobicoke experiments clearly negate the existence of public demand. Although the Hartford pay TV proponents artificially limited the Hartford test to 5,000 subscribers and alleged that there