

is a "back log" of demand, neither they nor any other proponents of pay television have demonstrated the existence of public clamor for such a system. In Hartford, less than 1% of the potential audience were subscribers and 42% cancelled subscriptions. The average number at any time of persons watching was 267, or only approximately 5% of the number of persons who subscribed. The Etobicoke test showed the same pattern, for during the Etobicoke experience, pay television subscribers actually declined more than 50% during the five-year test from an initial high of 5,500 down to 2,500 even at a time the pay TV operators were expanding their potential service area from 12,000 to 14,000.

In the face of such experience, how can it be contended that there is a pressing need or demand for the institution of pay television which as even its proponents on the Commission recognize, has such a potentially catastrophic effect upon the free service?

III. THE DETRIMENTS TO THE PUBLIC FROM A PERMANENT PAY TELEVISION SYSTEM CLEARLY OUTWEIGH ANY MINIMAL BENEFITS WHICH MAY BE DERIVED

The record, of course, has made it abundantly clear that the promises and siren songs of the pay television proponents have been demonstrably proven false. Pay television was first portrayed to the American public as a means by which television programming fare would be diversified and improved through the presentation of high quality minority-type programming which was allegedly unavailable over the free system. The pay TV proponents promised that, as the Commission noted in its First Report, "subscriber-financed broadcasts could and would provide a wider choice to members of the public interested in the fine arts, operas, educational and informative material and other similar kinds of programs."

It is now clear that pay television will *not*, in fact, yield the benefits which were its original *raison d'être*. The Commission's own Subscription Television Committee recognized the validity of what opponents of pay television have continually pointed out—that pay television will not, in any way, offer additional cultural and high quality diversified minority-type programming, but would program for the mass audience, and would create no long-term improvement in either the quantity or the quality of television programming. The Committee itself has now recognized that whatever hopes might once have been held out for such programming by pay television, they can no longer be realistically entertained (see Report, Pars. 54-57).

Thus, programming which pay television will bring to the public will be mainly motion picture films and sports events, and the only benefits involved are that (1) the public may see some motion picture films somewhat more quickly than these films would be shown on free TV, and (2) pay television can present certain sports events as heavyweight championship bouts and other sports programs which are now, for one reason or another, "blackout" on free TV.

With respect to films, however, it should be noted that pay television does not promise first-run features; the Commission's Subscription Television Committee held that even the presentation of films from *6 months to 2 years old* would be a sufficient justification to authorize a permanent pay television service. Yet the Committee never attempted to explain what the difference might be between a film, say, 18 months old and one 26 months old insofar as the public interest was concerned, nor did it attempt to explain why whatever small difference may exist was sufficient to authorize the permanent establishment of a system which could potentially destroy free television, and the billion dollar investment which the American public has in it.

Movies, indeed, are desired by the American public. Yet this Committee well knows that free television now presents a plethora of motion picture films, some of which are less than 2 years old. Moreover, the average age of movies presented on the free system has steadily been lowered during the past 5 years, and each year more current films are presented. There is no reason to suspect that this trend will not continue, although it certainly will not continue if pay television is authorized on a permanent basis. The best way of destroying any advance in free television movies is to allow pay television to be authorized.

And with respect to sports, it is well known that sports events on free television have been proliferating at a rapid rate. Virtually every sports event known has been presented on free television, and, indeed, many critics have chided the networks for overemphasis on sports programming. To contend that the airing of the occasional blackout heavyweight championship fight or other