

**B. Subscribers Will Be Limited to
A 10% Penetration**

Any Pay-TV authorization is based upon the Commission's assumption, derived presumably from the Hartford experience, that Pay-TV would achieve, at best, a 10% penetration, and the average subscriber audience would be 10%. Consequently, Pay-TV would not affect more than 1% of the television homes in the United States. From this, the Commission deduced that there would be no noticeable impact on free TV.

Since the impact of Pay-TV on free TV is of paramount importance, the assumptions should be crystallized as rules. There is no way of precluding subscribers from watching any given program and, consequently, any limitation must be in terms of a limit on the number of subscribers. We believe that a 10% penetration — a limitation of the number of subscribers to 10% of the net circulation in the market — is, in fact, excessive in light of the actual experience in Hartford. Since the Commission, however, has utilized this figure in the Further Notice, we have assumed its validity for purposes of this discussion.

If the Commission adopts the hearing requirement for Pay-TV in the top 100 markets, no specific additional rules will be required in this context. It is assumed that during the course of such a hearing, the proponents would be required to demonstrate the number of anticipated subscribers, the penetration of the market, and the effect of such a penetration on free television. Any final decision by the Commission to grant any particular application would necessarily contain a determination as to the maximum number of subscribers proposed and the effect of such a penetration on free television. The Pay-TV system, thereafter, would be limited to its proposal and any growth beyond this point would require prior Commission approval and another hearing.