

program cost which exists in pay television, and because the Commission cannot and does not regulate the rates charged by free television stations for time,¹² the Committee reasons by analogy that there is no need to regulate the direct costs to be charged to the public under a pay television system.

26. The difficulty, however, with the Committee's analogy is that it is both legally and historically unsound. The very difference which the Committee seeks to ignore is precisely the reason why rate regulation of broadcasting is not authorized by the present Act.¹³ Ironically, this is made clear by the very case which the Committee cites in support of its novel theory.¹⁴ In *Pulitzer*, the Court of Appeals pointed out that the absence of a direct charge by broadcasters to their listening audience is precisely the reason for the lack of rate regulation, and this fact was to be distinguished from the situation where such a charge would be present. It is inexplicable to Petitioners how *Pulitzer* can be read by the Committee as obliterating the clear historical distinction between free and pay TV when the rationale of the case is based precisely upon the existence of such a distinction.

27. The difficulties to which the Committee's position lead are demonstrated by the justifications which it offers in order to defend its abdication of responsibility. Thus, the Committee urges that rate

¹² Which rate is then reflected in the hidden "indirect" cost.

¹³ See, e.g., note 4, *supra*, where Senator Broussard pointed out the difference between radio, whose rates are not regulated, and public utilities, whose rates are regulated, as being that radio makes no direct charge to the public for service while the others do.

¹⁴ *Pulitzer Publishing Co. v. F.C.C.*, 94 F.2d 249 (D. C. Cir. 1937).