which totally excludes all of the families in the lower one-third economic level of the United States. Thus, in attempting to demonstrate that a permanent pay television system will have no adverse impact upon the free system, the Committee heavily stresses (Par. 107) that, on the average, pay television could not expect to attract more than a small percentage of the total television listening audience. And (again, in another context) the Committee notes (without apparent concern) that this small percentage excludes the lowest economic third of the nation (Pars. 74-75). Yet, nowhere in the entire report does the Committee even face the question of whether the use of a scarce broadcast frequency, which would be totally denied to one-third of the families in the United States and, at best, would be limited to a fraction of the total listening audience, is justified merely for the purpose of presenting some additional movies and occasional sports events.[19] The Committee, instead, appeared to view its task as one of finding *any* benefit, no matter how slim, which would then be used as a justification for recommending pay television.

39. The Committee's casual attitude toward waste of frequency space is odd, indeed, when contrasted to the concern which the Commission manifested in its CATV proceedings. In the Commission's First and Second CATV Reports, it made it abundantly clear that the Commission's main concern was to protect the viability of the one or two new UHF facilities which might be instituted in communities throughout the country as a result of the passage of the all-channel

---

[19] Petitioners do not wish to imply that they agree with the Committee's evaluation of the percent of penetration which pay TV could achieve, although it does agree that this penetration would not occur in the lower economic levels. Petitioners have here attempted merely to demonstrate that even on its own terms, the Committee failed to make the required assessment of benefits and detriments.