

explanation for the basis of the guess) that the rate might be somewhere between 10% and 20% (see Par. 149). And with regard to the critical question of program diversion, the Committee also recognized that the Hartford test could provide little meaningful explanation, and pointed out that the question "is one of the imponderables . . ." (see Par. 111).

43. At the same time that the Committee recognized the deficiencies in the Hartford experiment, it inexplicitly accepted as gospel truth the notion that only an average of 5.5% of the persons who subscribed to pay TV would tune in to the pay TV offerings. The Committee's entire conclusion as to the lack of substantial adverse impact upon the free service (Par. 107) is couched entirely upon an uncritical acceptance of the 5.5% figure which, it must be noted, is based upon the weekly average of only 267 Hartford subscribers.

44. But this is akin to creating an empire built upon quicksand. The Committee offered no persuasive explanation as to why it chose to accept so readily the 5.5% figure. Although the Committee indicated its reason to be that the 5.5% figure remained constant whether the station presented first subsequent-run, or whether it showed older movies, the Committee failed to recognize that the steadiness of the figure merely reflected the fact that, to the average viewer, *a first subsequent-run movie is no more attractive than a movie which may be three, four or five years old.* The run-of-the-mill movies shown at Hartford were simply not attractive enough, or different enough from material shown over the free service, to interest pay TV viewers. Rather than reflect a need for the programming offered, it indicated that the Hartford test, in fact, did not offer *any* meaningful "supplement" whatsoever to the material presented on the free service, much less a "beneficial" supplement.