

45. At the same time, the test indicated that when a popular and unavailable item, such as a heavyweight championship fight, was presented, the viewing percentage rose to 83.6%, and it takes no great prophetic insight to discern that if similar popular productions are kept off the free service and placed only upon the pay service, the viewing percentage would rise far above 5.5%, and the Committee's conclusions would be revealed as erroneous.

46. There is yet another deficiency in the Committee's reasoning concerning impact, even if the 5.5% figure is accepted. The Committee, based upon this figure, has assumed the audience diversion to be 2-3/4% even if there were a 50% penetration, *i.e.*, if 50% of the television homes subscribed to the pay TV service. It then held that such a low percentage, combined with the rules which it adopted covering program and talent siphoning, gave it no cause for concern (Par. 107). In so doing, however, the Committee obviously treated all of the stations in the cities to be affected as if they were on an equal level. In other words, it failed to recognize the well-known fact that in cities with four stations, three of them network affiliated, the non-affiliated station can only count upon a small fraction of the total potential audience, the overwhelming majority of whom would normally be tuned to the three network affiliates. Thus, while the three network stations might have significant strength to resist the small diversions which the Committee prophesied as occurring, the independent station would be in a far worse position, and its financial viability may be destroyed even by a small further fractionalization of its audience.

47. Indeed, it was precisely the effect of fractionalization of the small potential audience of UHF stations which lay behind the adoption of the CATV rules and which made it necessary for a CATV system desiring to import distant signals to demonstrate that such