

Mr. GAYNES. No; but the amount I have to pay to use the U.S. mail is.

Mr. BROWN. Should we require the payment of the use charges by radio and television stations? Is that what you are suggesting? I understood your suggestion to mean that we should regulate the advertising rates.

Mr. GAYNES. No; I am sorry. Then I have been misunderstood and I apologize.

What I am saying is that right now you do not have the power to regulate the rates that will be charged by pay television stations to the user, to the individual consumer. The \$1.50 or so that the pay television station will charge the public, under the present act the FCC does not have the power to say, "For this movie you can only charge no more than \$1.50."

Mr. BROWN. It seems to me that is a little closer to telling Life or Esquire how much they must charge for their issue, for each edition which is sent through the mail rather than charging for the mail handling of that.

If you say that we are charging for the use of the mail a certain rate—we have been all through this in the last couple days in the House—then are you suggesting that we should charge for the use of the airways in some way?

Mr. GAYNES. No.

Mr. BROWN. But you are suggesting that we limit the charge which may be levied for the individual program?

Mr. GAYNES. Yes.

Mr. BROWN. Would you draw an analogy that we should be able to say to Esquire magazine, "You can only charge 25 cents a copy or 35 cents a copy since you use the mails"?

Mr. GAYNES. No, I would not. It would raise very serious constitutional questions.

Mr. BROWN. I wonder if there are not constitutional questions involved here.

Mr. GAYNES. Yes; there are very serious constitutional questions involved as to whether you could do that. The most serious question—I know Zenith would get up and go to the Supreme Court and say you certainly can draw the same analogy you draw and they might win.

If they won, there would be no regulation. I think that would be terrible because I think there is a difference between the use or the expenses which Life and Time have vis-a-vis the mailing rates, set against the total amount of their cost, and giving in effect a frequency to a station.

They are not exactly similar but they are enough similar to raise very serious constitutional questions. If the constitutional question is resolved against regulation, a private entrepreneur can use a scarce facility for the use of all people, he could charge what he wants for it and there is no one in the world who could tell him how much he could charge.

I don't think that is the desirable result. You may be right. It is conceivable that you don't have the power to do it either. I don't think that is an argument for it.

Mr. BROWN. You raise the question and I have some figures, Mr. Chairman, which I would like to put in the record. They relate to