

reduce the effective number of channels found by the Congress to be required for free television. The FCC should not proceed with a course of action that represents a fundamental modification of the structure of television broadcasting without explicit congressional approval.

The report of the FCC's Pay TV Committee justified proceeding without such approval on the ground that the Congress was allowed a sufficient amount of time in which to make its views on pay TV known to the Commission. Even if the Commission were faced with an ambiguous congressional silence, this would not be sufficient justification for it to proceed on issues of a kind that are more properly resolved by the Congress.

However, the congressional reaction to pay television since the FCC first began consideration of it in 1955 can hardly be characterized as "silence." The resolutions of this committee and these hearings are indications of the vital interest that the Congress has taken in pay television.

Of course, the question of whether the FCC should authorize pay TV without explicit congressional guidance is not the same as the question of whether the Commission should regulate CATV without such guidance. Like unlimited CATV, pay TV poses a substantial threat to existing free television service. In the CATV situation, however, Commission inaction would have allowed unregulated CATV to disrupt established national policy. With respect to pay television, such disruption would result from the affirmative action of the Commission.

Thus, the same consideration which justified prompt Commission action with respect to CATV should require deference to the judgment of Congress with respect to pay TV. It is significant to note that, in its second report and order on CATV, as to the CATV operator who originates programming, the Commission specifically refused to hold that this type of pay television is in the public interest and stated that it would seek guidance from the Congress.

One obvious question that must be answered is what advantages of pay TV could be expected to outweigh its adverse effects on our present system of free television broadcasting. When pay TV was first proposed, and indeed before the committee earlier this week at least one of its supporters promised that it would serve the unique and diverse programming tastes and interests of minority audiences, audiences which the pay TV proponents said were unserved by free television. This was to be a "beneficial supplement" to free television.

However, to the extent that the Hartford pay television experiment can be relied upon for anything, it has completely ended this myth. The pay TV report repeatedly recognizes that pay TV must provide the same types of programming as free television if it is to be at all acceptable to the public and, therefore, a financial success.

Under the proposed rules, feature films and sporting events, which are provided in quantity by free television, may comprise 90 percent of pay TV programming. Furthermore, the Hartford experiment shows that the balance of pay TV programming would not be made up of the so-called cultural programs that were promised, but would be made up of drama—not necessarily Shakespearean drama—variety shows and entertainment programs appealing to mass audiences.