

minded us on several occasions, again this week, that there were very serious outcries from Arizona this spring on this very matter, in the case of the Clay-Foley championship fight. But the situation still exists. That is part of what we are up here talking about today.

Now let us turn to the second type of sports event set up by the proposed Commission rules, that of the nonspecific sports event; the game which is played as a part of a regular season. The proposed Commission rules cover this as well. I refer you now to paragraphs 266 and 267, commencing at the bottom of page 92 of the proposed FCC report.

If a substantial number of nonspecific events, such as home games or away from home games, or the so-called games of the week, were televised over free television in the pay TV community and were, and I quote from the proposed FCC report, "within each of the 2 years preceding the proposed STV broadcasting thereof," then no games in that category may be presented by pay television in that community.

As the proposed FCC report states, the standard is to be applied on a category-by-category basis, and, here I quote again from the report, "If during one but not both of the 2 years preceding proposed STV broadcast, a substantial number of events in a category were not televised in a community, the category will be considered not to have been regularly televised therein and STV may show the contests in that category." That means all such contests.

Now, that is the rule that is proposed. Does it prevent siphoning? A pay TV promoter could use his economic leverage to purchase the games in a category of nonspecific sport events, such as regular season home baseball games which may not have been broadcast in the community over free television, and present them without any delay. For example, assume that a baseball team plays 80 home games and no games in this category are broadcast on free television in the home community. Pay TV could purchase the television rights to all of the home games in this category the very next season, while the away from home games previously broadcast by television could be withdrawn from free television by the ball club during that season so that they, too, could be made available to pay TV the following year. The same situation could exist if some but not all of the home games were broadcast on free television.

Now, I hope this may help clear up the so-called 2-year provision which I think is a snare and a delusion.

Whole categories of regularly scheduled variety shows, such as the "Ed Sullivan Show" or the "Dean Martin Show," and free television drama, such as the "Bob Hope Theater" or last season's ABC "Stage 67," and entertainment and dramatic specials, such as "Death of a Salesman" or the "Barbra Streisand Special," are not even offered protection from pay TV siphoning.

What is also important is that the proposed rules do not and could not stop pay TV from pirating free television program talent. Thus, the rules that are intended to limit siphoning are ineffectual, despite the fact that they would involve the FCC in detailed, day-to-day regulation of every aspect of the programing transmitted over broadcast facilities by pay TV.

The impossible choice between no pay TV program regulation at all, which would have a severe adverse impact on free television service,