

January 22, 1958, in which Dr. Stanton sets forth the basic position of CBS on the issue of subscription television, and, as attachment B, a copy of the Comments filed by CBS in FCC Docket No. 11279 on October 7, 1966, in which the results of the Hartford trial of subscription television are analyzed. We continue to adhere to the views there expressed.

We at CBS are encouraged that your Committee has undertaken its study of subscription television. We have always been of the opinion that the Commission does not have the authority under the existing statute to authorize subscription television and that the question whether it should be authorized is one properly for the Congress. As long ago as 1955, at the time of our First Comments in the Commission's subscription television proceeding, we said:

"When all of its elements are considered together, it must be concluded that pay television is a hybrid which defies classification under the statute because it does not fit within its framework. That hybrid character would make it impossible for the Commission to deal effectively with the regulatory problems which have been suggested. Any effort to solve these problems would carry the Commission far beyond the function delegated to it by the present statute. The problems of regulation involve serious social and economic questions, as well as questions as to the proper area for governmental action. Such questions should be answered by the Congress."

The need for Congressional intervention in this matter cannot be better shown than by reference to the *Proposed Fourth Report and Order*, devised by the Commission's Subscription Television Committee and currently under consideration by the Commission. The *Proposed Fourth Report and Order* not only illustrate the inability of the Commission to deal effectively under the existing statute with the regulatory problems presented by subscription television proposals but also presents in bold relief the grave issues of public policy which underlie such proposals.

*The Proposed Fourth Report and Order—*

reflects concern about the blackout of free television channels, capable of serving large audiences, for the purpose of devoting such channels to programming for the privileged few, but in attempting to limit the scope of such blackout, would permit an absolute monopoly for such operations in the communities where they would be permitted;

reflects concern over the cost to the public of subscription television but—operating under a statute that provides for no rate making authority over broadcast licensees—fails to make possible any competition between subscription television entrepreneurs which will protect the subscriber from price-gouging practices;

reflects concern that subscription television, if it succeeds, may permit a small but economically advantaged subscription television audience to siphon away many of the attractions which all members of the public may now see without charge, but proposes as a solution to such siphoning unprecedented—and we think unconstitutional—restraints which would forbid the presentation on subscription television operations of large categories of program material;

reflects concern for the scarcity of spectrum space and recognizes that wired services may have the potentiality for furnishing subscription television programming to the public, but makes no adequate assessment of the criteria which would justify the allocation of broadcast spectrum space to a service which—in the only test authorized by the Commission—has failed to demonstrate the presence of a significant public demand.

It seems clear that if the Commission were to adopt the *Proposed Fourth Report and Order*, or any similar proposal for a permanent nationwide system of over-the-air subscription television, it would have decided important issues of national communications policy which it is not empowered to decide under the authority previously granted to it by the Congress. Your Committee can make an important contribution by strongly reasserting the authority of the Congress in this area.

In so doing, we hope that you will agree that it is self-evident that the free television system, while sharing the imperfections of other democratic institutions, is an affirmative public good, both as a communications medium and as an integral part of the American economy and we would urge you not to take any action which would hazard its existence and vitality, certainly not in the absence of the most compelling showing that the public interest would be served by an alternative system. We believe that your inquiry into this matter will establish that the facts do not justify a finding that subscription television would be in the public interest.