and in the best traditions of free enterprise. But, in this case, it just doesn't work out.

There are two reasons for this, First, there is no majority choice involved. Nobody is proposing that the test be whether a majority of the people want pay television. That is a test which pay television cannot meet.

The concept of a test by public choice in the market place is nothing more than a test to determine whether pay-television promoters can make money. This is only a test of whether a minority will pay enough to make pay television profitable. But proving economic profitability does not prove public interest. We know right now that it is not in the public interest to permit one viewer to black out a dozen.

Second, there is a vital distinction which destroys the analogy involving competition between new and traditional products. Let me demonstrate this with some examples. The ball point pen competes with the fountain pen and the electric razor competes with the safety razor. But, although the ball point pen is a competing means of writing, it does not prohibit the founain pen from occupying a place in a pocket. The electric shaver is a competing means of shaving, but it does not forbid the safety razor from occupying a place in the medicine cabinet. There is a crucial distinction between pay television and such examples; pay television does propose to occupy the scarce television channels dedicated to public use. It does propose to oust free television from these very channels.

It is these fundamental distinctions which make the notion of a people's choice during a test of pay television wholly unrealistic.

## THE TEST PROPOSED BY THE FCC

I originally came here to oppose the Commission's Report, which set forth the conditions of the test. I have since learned, from statements made before you last week by members of the FCC, that the conditions will be varied from case to case and improvised from station to station as applications are processed, without continuity, uniformity or certainty.

It seems to me, however, that I must initially take the Report at face value. It is our conviction that the so-called test there proposed is neither limited nor controllable and that, in fact, it is no test.

According to the Report, each pay television system may operate in three of more than 20 eligible areas. These areas include more than 40 different cities in which stations, assigned to those cities, are actually on the air. In these areas are the largest markets in the nation, precisely where the advocates of pay television have said they want to operate if there were no restrictions at all.

There is no limitation on the number of pay-television systems. Five have already been proposed, and more may be feasible. The so-called test could, during its duration, become effective in all 20-odd markets. On the assumption that only the three principal proponents will elect to participate and that they will decide to operate in the nine largest markets, 15 million television families—36 per cent of the nation's total—will be within the test area.

The period of the trial authorization is three years. The Commission has stated in its Report that it would not terminate the tests before the three-year period without evidentiary hearings; and that it might permit them to continue, after the three years, during the time required to conduct hearings, and reach a final decision.

The Report places no restrictions on the number of stations in a market which may participate, or on the number of hours during which each station may broadcast pay programs (except that it must broadcast 28 hours of free television a week), or on the times of day during which pay programs may be broadcast, or on the prices that may be charged to the public, or on the kinds of programs, or on the use of advertising.

The Commission stated in the Notice which preceded its Report that it did not want to encourage "inordinate investment" during the trial. But it has done just that. If only the nine largest markets were involved, the cost of equipping only 1 out of 4 of the television homes in the test area with decoders would, on the assumptions most favorable to the proponents, be just under a quarter of a billion dollars.

In addition, huge investments would have to be made, largely by local businessmen, in establishing and maintaining the expensive organizations for distributing decoding information and collecting program charges. All of these expenses the public would, of course, be expected to bear in one way or another.