

tioners that heavyweight championship boxing has been absent from free television for a number of years. This is due partly, as Petitioners note, to the fact that promoters of such fights have found it more profitable to distribute them to closed-circuit theater outlets and partly, we believe, because of a variety of other factors, including the quality of the bouts themselves and the unhealthy aura which has surrounded heavyweight boxing in recent years. The other sports offered to Hartford subscribers are all seen regularly and frequently on free television and Petitioners' contention with respect to such sports essentially boils down to an assertion that subscription television could circumvent existing limitations imposed by college and professional sports organizations to protect teams from the loss of gate receipts in their home areas. Thus Petitioners urge that subscription television could carry local and regional college football games in "which there is a strong local interest without being restricted to the so-called 'game of the week' now permitted by NCAA" (Petitioners' Comments, p. 14) and that "one of the major sports program supplements which subscription television could provide in . . . cities having major league professional baseball or football would be the broadcast of home games" (Petitioners' Comments, p. 15).

Even Petitioners' contention that a "home game" is a box office attraction not available on free television is not entirely correct. In New York City, for example, the Yankees' and Mets' home games have long been carried on free television, and the experience in New York and elsewhere suggests that whatever adverse effect, if any, the televising of home games may have on the box office is offset by receipts from free television as well as heightened interest in the sport. Indeed, in some major league cities there is evidence that home games are being kept off free television in anticipation of some form of subscription television.⁸

Passing the question whether home games will, with the passage of time, become more generally available to free television, we believe that the restrictions imposed by college and professional sports represent at this time a reasonable accommodation of conflicting economic and social interests, an accommodation, in the case of major professional sports, recognized and confirmed by Federal legislation which sanctions the black-out arrangements.

If the offering by subscription television of such home games be regarded as a supplement to the sports fare being offered in large quantities by free television, is it so beneficial as to justify an authorization of subscription television in the public interest? An audience accustomed to see "home games" of a professional football, baseball or basketball team on subscription television would, of course, have an undiminished desire to continue to see the "away games" of their home team, now generally available on free television. If subscription television was able to make home games available to subscribers it would appear probable, not only that it would bid away from free television the right to import "away games", but that it would no longer be advantageous for it to permit audiences to be diluted by permitting free television to import distant games of other teams. It strains credibility to believe that free television could continue to obtain the rights to these events under such circumstances.

C. Special entertainment, cultural, educational and informative programming

We have dealt in the above discussion with motion picture feature films and sports presentations which together, according to Petitioners' Comments, made up 91% of the first two years of Hartford subscription television programming, accounted for 95% of subscribers' expenditures and for 96.3% of the number of subscribers viewing all offerings of subscription television during the Hartford trial. We have urged that in these two categories subscription television is duplicative of free television programming and not supplemental to it.

We turn now to the remaining programs presented during the Hartford experiment—programs which Petitioners divide into two general categories, "Special Entertainment Programs" and "Educational and Instructional Programs". These furnish a crucial test of whether the authorization of nationwide subscription television would be in the public interest. For the bright promise of subscription television was never that it would be devoted almost entirely to presenting mass appeal programming to the American public and certainly not that it would preempt such programming from free television. Its greatest appeal to all critics and students of the television art, as well as to the Commission itself, has been the allegation that "subscriber financed broadcasts could

⁸ Thus, for example, in Los Angeles and San Francisco, home game broadcast rights were granted by the Dodgers and Giants to the now defunct Subscription Television Inc.