

better financed in the future than it has been in the past and will be able to enhance and strengthen its already excellent program offerings. Needless to say its service, like that proposed by subscription television, is free of commercial interruptions.¹⁰

We have dealt at some length with educational television only because we believe that it has in fact, during the almost nine years since the Commission's First Report on subscription television, provided that "beneficial supplement" to commercial television programming which, it was first thought, might be the contribution of subscription television. During that nine-year period the number of educational television stations has increased from 23 to well over 100, reaching a number of markets which exceed the number which could accommodate a subscription television service under Petitioners' "conservative" 10% penetration projections.

Entirely apart from any specific comparison between the cultural, educational and informational offerings of free television—both commercial and educational—and those of subscription television we would urge on the Commission the proposition that subscription television by its very nature is not suited to give "a wider choice to members of the public interested in the fine arts, operas, educational and informative material and other similar kinds of programs". (*First Report*, para. 48) Early in the debate over subscription television, in a 1956 statement before the Senate Committee on Interstate and Foreign Commerce, Richard S. Salant, Vice President of CBS, stated:

"But we doubt that pay television's promise of more educational and cultural programming will be kept. Nothing in the history of those mass entertainment media which are dependent for their revenues on direct payment by the public supports the likelihood of more culture and more education. One need only look at the history of Hollywood and its motion pictures. Exactly the same factor of the economic interest for mass audiences are operative in pay television, which will be dependent on obtaining the most dollars directly from the largest possible audience."

The Hartford trial bears out Mr. Salant's prediction concerning the reliance of subscription television on mass audiences. Over 90% of all Hartford offerings were theatrical features and sports events and these accounted for over 96% of all viewing. Hartford shows that a single Liston-Clay fight obtained almost four times as many viewing subscribers as the cumulative total of subscribers viewing all 50 so-called "educational features" broadcast during the trial period and that the six heavyweight championship fights obtained 89% of the cumulative number of subscribers who looked at all 35 "Specially Produced Entertainment Features."

Should it not now be abundantly clear, as Mr. Salant predicted in 1956, that subscription television is not a medium suited to provide a wider choice to members of the public interested in cultural, educational and informative material?

And—to the extent that subscription television is of only questionable viability—it will have to depend more, and not less, on mass appeal programs.

III. WHILE THE HARTFORD RESULTS ARE INCONCLUSIVE ON THE SIPHONING ISSUE, PETITIONERS' PROJECTIONS SHOW THAT NATIONWIDE SUBSCRIPTION TELEVISION WOULD BID AWAY SELECTIVE MASS APPEAL PROGRAMMING FROM FREE TELEVISION

As we have already shown, Hartford clearly demonstrates, and the Comments jointly filed by Petitioners confirm, that the program service to be offered by nationwide subscription television is duplicative of the program types now being offered the American public without charge. This fact alone should lead the Commission to conclude that the allocation of scarce spectrum space for this type of service would be against the public interest.

Authorization of nationwide subscription television, far from providing a "beneficial supplement to the program choices now available to the public" (*Notice*, para. 15), would—based on Petitioners' financial projections—seriously impair free television's capacity to present types of programming made available now and in the foreseeable future.

Such impairment would result from subscription television's reliance for product on the same program sources currently utilized by free television and its pro-

¹⁰ Although subscription television would not be free of commercials advertising its own offerings. These, under Petitioners' Proposed Subscription Television Rules, are excluded from the definition of commercial advertising. Petitioners' Comments, p. 67.