

jected financial ability to siphon significant programs away from free television. While Hartford obviously establishes subscription television's reliance on the same program sources, RKO's decision to limit Hartford subscribers (Petitioners' Comments, p. 4) to 5,000 (rather than the 50,000 it originally contemplated as a maximum) prevents any meaningful conclusions to be drawn from Hartford on the issue of program diversion. Thus, the Commission is not now possessed with any more data on the issue of subscription television's ability to siphon away programming from free television than it had prior to Hartford. The Commission must therefore make a determination on the issue of possible siphoning without the aid of empirical data. Petitioners' own projections, if correct, make clear that subscription television would have the financial resources to siphon significant amounts of quality programming from free television.

Petitioners' most "conservative" assumption contemplates a 10% penetration of television homes by subscription television in the top 91 United States markets. At a 20% penetration, they claim economic viability for subscription television in the top 175 United States television markets.

According to Petitioners, a nationwide subscription system achieving a 20% penetration of television homes would produce \$650 million annually in subscription program revenues (Petitioners' Comments, p. 44) based upon a \$65 per year expenditure on programs per subscriber (although they state that \$70 or \$75 would be "equally realistic"). At these revenue levels, we submit that the Commission must conclude, at least, that selective programming now being seen without charge by the public will in the future be seen only by those willing and, more importantly, able to pay for such programs.

It should also be clear that those programs selected for siphoning by subscription television will be in the most popular programming categories. Hartford demonstrates what we all already knew—that for better or worse the American public is more interested in seeing a major sports event than an educational feature. Thus in the Hartford trial, 82.9% of subscribers paid to see a Liston-Clay fight, while not one subscriber could be found who was willing to pay to see a feature called "Presidential Leadership." If events such as the World Series, the NFL and AFL Professional Football Championship Games, the major Bowl games, the Kentucky Derby and feature films such as Music Man and The Bridge on the River Kwai were unavailable for free home viewing we know that a significant number of Americans would pay to see them on television.

The Commission must realize that the \$650,000,000 projected by Petitioners will be dedicated to outbidding free television for major sports events and high quality feature films—not to the acquisition of such titles as "Meet Your Federal Government" or "Planning For Spending" which appear in Petitioners' Exhibit I.

Petitioners suggest that only 35% of the projected program revenues (35% of \$650,000,000 or \$227,500,000) could be available for program procurement purposes. While we do not for purposes of this discussion quarrel with Petitioners' 35% figure it is our view that in allocating program revenue to types of attractions Petitioners have arbitrarily related such allocations to the percentage of expenditures by the American public for admissions to specified spectator events. (Petitioners' Comments, Table 9, p. 45) Thus, \$152,425,000 or 67% is allocated to "Motion Pictures"; \$43,225,000 or 19% is allocated to "Legitimate Theaters and Opera and Entertainments of Nonprofit Institutions (Except Athletics)"; and the remaining sum of \$31,850,000 or 14% is allocated to "Spectator Sports". While Petitioners' Comments contain no information on how program procurement dollars were actually allocated in Hartford, it should be noted that the various programming categories available to Hartford subscribers significantly differed from the percentages contained in Petitioners' Table 9.

Since Hartford suggests that a major sports event would produce the highest single paying audience, we note with interest Petitioners' Comments to the effect that financial limitations would prevent a nationwide subscription television system from siphoning major sports events now seen on free television:

"If we apply the percentage of the public's spectator event recreational dollar which is spent on sports (14%), this would allow a national subscription television system, under the above assumptions, \$31,850,000 a year for acquiring sports events. But this amount is only 60% of the approximate fifty million dollars that conventional television is now paying to the promoters and owners for the television rights to the following top sporting events: (1) AFL professional football games, including championship and all-star games; (2) NFL professional football games, including title games; (3) baseball, including local, regional, network, weekend, world series and all-star games; (4) NCAA college football games, in-