cluding Sun, Orange, Rose, Cotton, Gator, Bluebonnet, East-West Shrine and Senior Bowls; (5) Kentucky Derby, Preakness and Belmont Stakes; and (6) Masters playoff, U.S. Open and PGA Championships. In addition are the amounts which conventional television is now paying for specially staged golf tournaments, professional basketball, track and field events and numerous other special sport attractions such as the U.S. Olympics." (Petitioners' Comments, p. 45)

While subscription television's $31,000,000 possibly could not outbid free television's $50,000,000 for all the sports events listed above, subscription television, given its limited programming needs, would be able to concentrate its dollars on the lion's share of the major events listed above. Thus, it is quite conceivable that at least 60% of the major sports events listed above could be siphoned by a nationwide subscription television system from free television.

In point of fact, subscription television would allocate its procurement resources so as to obtain the most subscribers. Since it can restrict its programming to prime time availabilities, it can concentrate its procurement dollars on the relatively few programs it needs. In the case of feature films it could (as it did in Hartford) repeat them a number of times. Petitioners do not contemplate that subscription television systems will offer a news service, which fact will, of course, conserve dollars for other program procurement needs. Finally, subscription television may well be in a position to siphon "box office" programming from free television without even offering as much money for these events as free television. This, as Petitioners suggest because

"* * * subscription television can show box-office attractions while conventional television cannot. The reason is not that subscription television will necessarily have more money available for program procurement than conventional television. The reason lies primarily in other economic factors."

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"Subscription television exhibition can be combined with simultaneous theater release without significant loss of box-office revenue by program producers and distributors. The combined amount of these box-office revenues will ordinarily exceed what sponsors can pay for a single conventional television release which largely exhausts all residual value of the feature. Furthermore, subscription release will have little effect on the residual value of motion picture film when ultimately released to conventional television. In short, subscription television and theatre box-office release are compatible while conventional television and theater box-office are incompatible." (Petitioners' Comments, pp. 19–20)

Hartford shows that it was never realistic to assume that a nationwide subscription television system would limit itself to those types of programs not presently being broadcast by free television. Quite obviously, the introduction of a nationwide subscription television system would cause proprietors of major box office events now seen on free television to invite offers from both subscription and free television. Petitioners in their Comments concede the threat of siphoning in a most eloquent fashion:

"In the final analysis, it would not only be contrary to our national policy which encourages competition, but also impossible as a practical matter for the Commission to erect a fence around conventional television which would protect it from all competition for talent or for audience. When people now go to the theater, concert hall or sports arena to see events which are not available on conventional television, they have been diverted from television viewing during the time that they see these box-office events. The motion picture industry, the theater industry, and the record business now compete with television for talent. This competition will continue whether or not subscription television exists. In addition, closed circuit theater television, in competition with conventional television, has taken over many types of programing, such as championship boxing matches, the Indianapolis Speedway races, and the home games of some of the teams in the professional football leagues. Finally, despite wired subscription television's misadventures in California, other such projects are reported to be well beyond the planning stage." (P. 47) [11]

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[11] Petitioners request in conclusion that the Commission "simply let the public itself evaluate subscription television in the market place" (Petitioners' Comments, p. 58). Without addressing ourselves to the constitutional questions involved, it is interesting to note that the California public rejected by a margin of almost 2–1 such an opportunity to evaluate pay television in connection with a wired pay television system that involved no use of the spectrum space. In reporting the outcome, the *New York Times* of November 5, 1964, noted: "The key reason for the outcome, observers agreed, was that a majority of the voters were convinced that they would eventually have to pay to watch the same TV shows that they now get free were Proposition 15 not approved."