

“Telemeter’s THEATRE IN THE HOME would enable this huge segment of the populace to buy such entertainment at home and at a price it could well afford, whether in Miami, Florida, or Portland, Ore. Telemeter may not satisfy those who prefer and can afford to see a Broadway show in person and they would continue to frequent the theatre.

“In addition to providing a valuable service to the public, Telemeter could well be a great stimulant to theatrical producers, film producers and those presenting cultural attractions that require public support to survive.”

71. In this regard, however, Telemeter submits that from a regulatory standpoint the Commission does not have the authority to regulate the content of subscription programming. Telemeter does not wish to belabor this point but believes that brief remarks are in order based principally upon the Commission’s determination, as reflected in the notice herein, that subscription television is appropriately considered a broadcast service.

72. Section 326 of the Communications Act of 1934, as amended, provides that the Commission has no censorship powers in connection with radio broadcasting. In this respect the Act only restates, to an extent, an existing and immutable constitutional concept. The Supreme Court has made clear that radio and television are entitled to the protection of the First Amendment’s guarantees of freedom of speech and freedom of the press. *United States v. Paramount Pictures, Inc.*, 334 U.S. 131; *Estes v. Texas*, 381 U.S. 532. The broadcaster, therefore, is subject to no greater encroachment in this respect than is the newspaper editorialist or the public orator.

73. Nothing could present a clearer case of censorship and abridgment of the broadcaster’s constitutionally guaranteed freedom, we submit, than governmental proscription of certain programs or the direction that certain programs or types of programs be carried. Because of the practicalities of the matter, we need not develop the position further.

74. Without conceding the Commission’s jurisdiction to regulate the program content of subscription programming, as set forth above, Telemeter nevertheless recognizes the desirability of a broad regulation which would serve to cast subscription television into the mold in which it is most likely to develop and succeed if for no other reason than to placate the alleged fears of the medium’s opponents. As set forth in its statement in this Docket filed May 25, 1965, and already reiterated herein, Telemeter believes that because of its nature, sub-