

of the two systems, so that both subscription and free (commercially sponsored) television will have the greatest freedom and scope for development of their individual potentials. We therefore recommend that *two categories of commercial licenses be established*. One category would include commercial licenses authorized, as at present, to broadcast unscrambled sustaining and commercially sponsored programs. The second—and new—category would include commercial licensees authorized to broadcast subscription and sustaining programs only, but not unscrambled commercially sponsored programs. Subscription licensees would have no limitations on the proportion or amount of subscription time. . . .

“... no limitation should be imposed on eligibility of STV for the various categories of stations.”

(FCC Question) “Should subscription television be permitted over more than one station in a community, and if so, should such stations be permitted to broadcast subscription programs simultaneously?”

(ACLU reply) “Here, again, the reliance on open competition as fostering diversity causes us to conclude in the *affirmative*. . . .

“The allowance of multiple [technical STV] systems would have a *deleterious effect on diversity*. . . .

“The ACLU believes that there should be complete *divorcement between the sources of STV programming and all the other facets of STV operation*. This is based on our firm belief that diversity is (a) limited by monopolizing programming in the hands of those who control the means of distribution, and is (b) broadened by developing new entrepreneurs, hopefully with new ideas and approaches to programming.

“... we oppose any limitation on types of programming presented by STV. We find particularly offensive any action by the Commission to dictate directly the specific kinds of programs that may be seen on STV as unwarranted government intrusion into program content, and a form of censorship.”

SUPPLEMENTARY COMMENTS

Subscription television by wire or cable

ACLU believes that the initial regulations to establish STV broadcasting should require that STV be made available to the entire population served by STV carrier stations, both by cable and over-the-air. ACLU supported the FCC's responsibility to regulate CATV, and endorsed the requirement that CATV systems must carry the signals of all local stations. This regulation promotes diversity and should not now be modified to exempt stations that are coded for STV purposes. Consistent with these principles, all homes served by cable and CATV must have the right to become individual STV subscribers.

If the FCC should fail to require that cable and CATV systems carry all STV stations, millions of families could arbitrarily be deprived of “free” programs, without the compensating right to subscribe to the STV services which replaced them.

ACLU has noted that leading authorities have predicted startling increases in the diversity and usefulness of public electronic communications by cable systems of distribution which can provide a greater number of channels, higher capacities for new types of services, and eventually multiply choices by the two-way “telephone exchange” principle. Such forecasts have recently been made by such responsible leaders as General David Sarnoff and Dr. Joseph Charyk. In 1963, the Stanford Research Institute predicted that 15 million families might subscribe to pay television by the mid-1970's, of whom 10 million, or two-thirds, would be connected by cable.

It therefore seems essential that the basic regulatory structure of STV, from the beginning, incorporate provisions for integration of cable with on-the-air distribution in the interest of maximum diversity. Even now, new types of STV services can be provided on cable channels which are not required for local TV stations.

Regulation of STV systems

In its October 7, 1966 comments, the ACLU pointed out that direct public payment creates a new type of relationship between the audience and the producers and distributors of program services, and called for “divorcement between the sources of STV programming and all other facets of STV operation.” Consistent with this objective ACLU re-affirms its belief that all systems of interconnection and networks, whether cable, microwave, or satellite, be directly regulated.

Since the public will be making direct payments to STV systems which will be local monopolies, the FCC should carry out its responsibility under Section 1