SUBSCRIPTION TELEVISION

TUESDAY, OCTOBER 10, 1967

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND POWER,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. Torbert H. Macdonald (chairman of the subcommittee) presiding.

Mr. MACDONALD. The hearing will come to order.

This is a continuation of the hearing on subscription TV.

The first witness is our very distinguished colleague and member of our committee, John Dingell of Michigan.

STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. DINGELL. Mr. Chairman, I thank the committee for the privilege of being here this morning.

I am aware of the fact that the committee is busy with an abundance of labors and that this fine subcommittee, so ably chaired by the gentleman from Massachusetts, has many witnesses to be heard. For that reason, Mr. Chairman, I will not read my prepared statement but will submit it for the record and ask that it be inserted therein.

Mr. MACDONALD. Without objection, it is so ordered.

(Mr. Dingell's prepared statement follows:)

STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

One of the most challenging aspects of our work as members of the Committee on Interstate and Foreign Commerce is the legislative oversight of Federal regulatory agencies, including the Federal Communications Commission. In observing the work of the Federal Communications Commission, it appears the appropriate solutions to problems are in constant decline.

An example of this is the Commission's recent announcement concerning pay television. On July third of this year, the Subscription Television Committee consisting of Commissioner James J. Wadsworth as Chairman and his colleagues, Robert E. Lee and Kenneth A. Cox, recommended that a report and order authorizing non-experimental pay television be adopted by the Commission.

It is revealing that Commissioner Wadsworth, although Chairman of the Subscription Television Committee, saw fit to disassociate himself from his two colleagues in recommending the adoption of the report and order. In a rather curious footnote, he stated, "In agreeing to submission of this document to the full Commission, I do not mean to imply that I endorse adoption of it."

There are many important problem areas which urgently demand careful and deliberate consideration and action by the Commission. It should be remembered that the Commission is the Federal agency which has been assigned the responsibility and equipped with the expertise needed to analyze and resolve problems

involving the public interest which arise in the communications industry. Instead of carrying out this mandate of Congress, the Commission apparently has decided to devote its energies and resources to an unwarranted expansion of its jurisdiction. Unless the Commission reverses its course and gives prompt and careful consideration to the essential and assigned tasks now pending before it, the communications field will soon become a hopeless morass in which the public interest will disappear from view.

The great and pressing problems to which the Commission should be addressing itself are numerous indeed. For the record, I believe it is important to review a few of them.

THE SPECTRUM

What has the Commission done to solve the problem of allocating the radio spectrum? At the insistence and direction of an exasperated Congress, the Commission has failed to follow through. Since that time and with increasing frequency, each day's mail to the Congress brings more complaints and pleas from taxpayers and from police departments throughout the nation who urgently need and require space on the radio spectrum. For years the Commission has had "under consideration" a study and analysis of a proper allocation of radio frequencies to commercial public safety users of land-mobile facilities. But instead of once and for all establishing a workable, usable system, the Commission has stumbled on in patchwork fashion without usefully and equitably allocating the spectrum.

In addition to the 7,000 commercial and educational radio and television transmitters in the United States, there are five million transmitters that are not used for such broadcasting. Not only police and fire departments, but the space program, aviation, and business firms require additional space on the spectrum.

I have found shocking the many comments I have received from the Chiefs of Police throughout the country describing impossible circumstances under which their departments labor because adequate frequency space has not been allocated to them.

According to the Commissioner of Public Safety for Mt. Vernon, New York:

"During our recent disturbances during July our one frequency was a specific example of various instances where a shortage of radio space hampered our men in the efficient performance of their duty and delayed or prevented prompt and effective response to emergency . . ."

The Chief of Police of Cleveland, Ohio, has written that:

"This department . . . desperately needs more frequencies . . . because Texas police departments are on the same band as the Cleveland Police Department, this creates obvious confusion in our broadcasts. . . . During riots or national catastrophies the police and Ohio National Guard have no mutual radio frequency."

As recently as August 23, the Los Angeles Police Department stated:

"The Los Angeles Police Department still has not been able to activate its planned city-wide emergency frequency because of a lack of a frequency which can be assigned to that use. . . . The lack of radio frequencies for critical public safety service has become acute."

The Chief of Police of Newark, New Jersey, has said:

"Even during normal operations, we are seriously handicapped because of a lack of available frequencies. It was a serious problem during the recent disturbance in our city and the solution to this problem is a reallocation of the frequencies, particularly to those larger cities who have considerable mobile equipment in the field."

On September 26 of this year, the Chief of Police of Sioux City, Iowa, wrote of his growing concern about the channel crowding of the public safety radio frequencies:

"We share our frequency with the cities of Pipestone, Minnesota; Laverne, Minnesota; New Ulm, Minnesota; and Davenport, Iowa, and should a mass civil disturbance occur in Sioux City, this outside traffic could easily disrupt our communications network here and render it ineffective. This has occurred during routine daily work, but I can foresee serious problems if we urgently needed to utilize our radio and were unable to do so because of foreign interference. My department relies on the radio system and without it, I feel that law enforcement deteriorates badly."

Instead of devoting its energy to solving this important problem, the Commission has ignored the seriousness of the situation. It proposes to allocate precious spectrum space for yet another form of commercial entertainment, completely ignoring the present pressing necessity to study and reallocate the spectrum for public safety and other purposes.

TECHNOLOGY

To what extent has the Commission endeavored to improve the technology of radio or television broadcasting We all know the answer. It has done next to nothing. It has made itself a servant of the Goliaths of the communications industry. If those Goliaths, for their own purposes, want to make modifications and adjustments, they can generally count on the Commission to go along. If technological innovation is not in their selfish interest, then there will be no innovation or improvement in the public interest because the Commission fails to fulfill its role as the public's David.

Stations merchandise goods so that their owners can merchandise their stations. Does this utilization of the public airwaves serve the public interest? I believe most Americans agree that the public interest requires more than profits alone. I requires public service as well.

To what extent has this Commission attempted to improve the content and the form of programs? The modern miracle of broadcasting can give us so much. It need not provide the same bland emptiness hour after hour, day after day, week after week. But the Commission has not promoted the public interest by requiring diversity of program content or by encouraging those persons who profit from the use of this public property to invest a reasonable portion of their resources into adequate diverse public service programming. As a matter of fact, the Congress is soon expected to give its final approval to the Public Broadcasting Act of 1967, to remedy the Commission's inaction.

Does the Commission honestly believe that promoting a new form of private fee use of the public domain serves the public interest? I do not.

PROTECTING THE PUBLIC INTEREST

The most important responsibility that the Commission has to the American public is, in the words of the Communications Act of 1934, to act "as public convenience, interest or necessity requires." To what extent has this watchdog of the public interest exercised its responsibility to protect the public?

The airwaves and the radio spectrum are public property—they are part of the national domain—they are a natural resource belonging to everyone in America. The Commission is charged with regulating this precious resource in the public interest. The FCC regularly permits the purchase and sale and resale of what is the public domain by entrepreneurs whose only interest is to maximize profit. Examples are legion. All too often we see reports of another major financial coup by broadcast-station-merchants acting with the implicit or explicit approval of the Commission. This is no different than if the National Park Service leased a public park to a private businessman for a dollar a year and permitted that businessman to sell and resell the right to exploit the park to the highest bidder. Any government official would find it impossible to justify such action. Yet this is exactly what station owners do and the Commission has taken no effective steps to discourage or terminate this misuse of public property.

Shouldn't the Commission spend more of its time and energy reviewing the damaging impact such misuse has upon our national economy?

HOUSECLEANING

This year once again the term *ex parte* has been injected into an FCC proceeding. The Commission should have learned by now that Congress means what it says when it forbids *ex parte* proceedings in adjudicatory matters.

In short, has this agency acted guard to the public interest? Has it embarked upon studies which would enable it to recommend legislation to insure that the public gets an even break from the healthy commercial exploitation of the airwaves? Has it acted to assist public safety by fair allocation of the airwaves? Has it acted to prevent the same bland programming by every station on the air?

WHY SUBSCRIPTION TV?

The Commission has not resolved these problems, instead, it has spent untold time and effort pasting together a new communications horror—so-called subscription television. Once again, unhealthy exploitation is taking precedence over the people's interest in high quality non-fee programming. Fifteen years have been devoted to this pro ect with scarcely a thought given to whether there is a *need* for it. Instead of exercising its statutory responsibility to regulate the

present system of broadcasting, the Commission proposes to create a new form of broadcasting. This act of the Commission is an admission of its own inadequacy. Rather than face up to the issues, once again in its characteristic fashion it has avoided them. Instead of improving free television it is merely creating an alternative medium without any considered forethought, without any direction, and without the faintest guarantee or assurance that this new gimmick will serve the public interest. This is regulatory bankruptcy.

What basis has the Commission established for its latest panacea to right the wrongs of commercial broadcasting? What thorough studies has it made during all these years which clearly point to the direction it now proposes to take? I have reviewed the Commission's recently proposed fourth order and report and its accompanying proposed regulations for subscription TV, and can see no logical or compelling reasons for the Commission's action. From the time it asserted its dubious authority, the Commission's reasoning has been fraught with contradictions, vagaries, and inaccuracies which cannot go unchallenged.

By what specific statutory authority does the Commission find that it has the power to license non-experimental subscription television stations to use a portion of the public domain? In my opinion and in the opinion of many legal authorities in this field it has no such right. It is true that from time to time the Commission has written to Members of Congress with regard to its statutory authority to permit subscription television. It has not received that authority. In fact, resolutions were adopted by the House Interstate and Foreign Commerce Committee in 1958 and 1959 requesting the Commission not to authorize subscription TV on a permanent basis without appropriate legislative action. The Congress has not amended the Federal Communications Act to permit subscription television. Nevertheless, the Commission has attempted to invent a jurisdictional basis and thereby to thwart the will of Congress.

The Commission hangs its hat on Sections 301 and 303 of the Communications Act for authority. A careful examination of Section 301 reveals that it is merely a general purposes provision. It does not give any authority whatsoever to the Commission to act. That authority must be found in the appropriate provisions of the Communications Act which specifically delegate to the Commission its rights and its power.

These are enumerated in Section 303. If the Commission relies upon Section 303(g) which provides "for the experimental use of frequencies and generally encourages the larger and more effective use of radio in the public interest," then it is clearly erroneous to build upon that provision by permitting *non-experimental*, permanent type licenses for pay TV. The rest of the jurisdictional argument which the Commission has proffered concerns itself, curiously enough, with the express prohibitions relating to broadcast licensees, namely Sections 315, 317, 325 (a) and (b) and 326. Simply stated, the Commission cannot claim statutory authority to grant these licenses on other than an experimental basis because the statute does not give the Commission that authority.

Does the Commission now rely upon the decision in *Connecticut Committee Against Pay Television* v. *Federal Communications Commission* as authority to license a subscription television station on a non-experimental, permanent type basis? Nothing in that decision grants the Commission such authortiy. The decision is specifically based on the obvious power of the Commission to grant an experimental license.

Let us make for the moment the unjustified assumption that the Commission does have the jurisdictional authority to grant a non-experimental subscription television station a broadcast license. Has the Commission forgotten that all its license grants must be "in the public interest"? How can the Hartford experiment justify subscription television as an activity "in the public interest"?

If the Hartford experiment proved anything, it was that there is no extensive public demand for subscription TV as presently conceived. To begin with, the Commission decided that the best kind of an experiment for subscription TV would be one taking place in many markets so that the findings would enable the Commission to make valid projections based upon a broad sampling. In 1957 in its first order and report on subscription television, the Commission made 20 market areas available for the operation of experimental subscription television stations. However, so little interest was generated that the experiment was made in only a single market area—an area, incidentally, which is not in the top 10 major TV markets of the country.

The Hartford trial actually was supposed to begin operations after 2,000 subscribers had been obtained. Its propenents, including the Commission, looked forward to installation of some 10,000 decorders the first year and eventually 50,000

subscribers. What were the results? The trial began with 188 subscribers including 48 who were test subscribers and 12 who were complimentary subscribers, not 10,000. By the end of the second year there were only 4,782 subscribers, not 50,000. It was at that juncture that the proponents recognized their failure and placed a 5,000-subscriber "limit" to the experiment.

Moreover, the FCC documents reveal the shocking fact that throughout the Hartford experiment, the average number of persons who viewed subscription television at any one time was 151. This was one-fiftieth of one percent of the total Hartford audience.

The proponents of subscription television originally told us that pay television would provide programs of educational and cultural value not available from commercial broadcasting. They would offer a wide choice of fine arts, educational, informative, and similar programs to the public. The experiment conducted at Hartford demonstrated that subscription TV would not provide these choices. Ninety-three percent of the programs shown were movies and sports events and the small remaining percentage devoted to the type of programming that STV proponents claimed were to be broadcast in abundance. Moreover, the proponents of STV now admit in documents on file with the FCC that they are not able to obtain first-run films, outstanding sports events, and other "box-office" attractions.

There is no good reason why the Commission has refused to explore the single most important issue arising from the impact of pay TV; that is, how free TV will be affected by the competitive aspects and the monopolistic tendencies of subscription TV.

The Commission also has avoided the questions of the impact which STV might have on CATV and noncommercial educational television. In customary FCC fashion, the fourth order and report relates that the Commission has decided to defer analysis of the real STV/CATV problem for another day. Unfortunately, technological advancement cannot wait. It is entirely improper that the diverse and complex ramifications of CATV would be omitted from any important study of subscription television.

As to the impact of STV on noncommerical educational broadcasting, the House has recently passed the Public Broadcasting Act of 1967. This legislation ultimately will call for outlay of substantial funds to finance an ambitious and necessary project to provide innovative programs for the American people. Yet nowhere in the Commission's study of STV can we find even the slightest hint as to what STV's impact might be on ETV.

Essential to any consideration of STV, of course, is cable TV. Despite the limitless possibilities cable communication offers to conserve valuable spectrum space, it is but another area of FCC neglect. How ironic that in view of the lack of available radio spectrum for the many necessary services which it must provide, the FCC should fail to give us an expert analysis of the benefits which cable transmission might offer. Why didn't the Commission include a study of cable transmission in its study of subscription television?

On page 75 of the proposed order and report, there is a discussion of the fact that although pay TV inherently requires a payment of fees by the public, there is no necessity for the Commission to decide what these fees should be—in other words, that the situation does not require rate regulation. After all, the document blithely states, "The public is free to subscribe or not to subscribe to STV services."

They then go on to say that the market place is the best regulator, and will undoubtedly establish, over a time, what the proper fee structure would be. This is just unbelievable—to give an individual firm a monopoly on one of America's largest markets, and then to allow them to charge whatever they desire.

Perhaps we need to conduct a course in basic economics for the members of the Commission. I would have hoped that, at this late date, these gentlemen would realize the distinction between the granting of a monopoly and the competition of the market place.

I find it frustrating and exasperating that the agency to which Congress delegated the responsibility to protect and serve the public interest has avoided the problems it was set up to resolve and embarked instead upon an ill-conceived course.

On page three of the proposed order and report, there is a rather detailed discussion as to the "lengthy period" during which the Congress might have have provided "Congressional guidance" on this matter. It is stated that "The Congress has not acted on the matter. We welcome any guidance it may wish to give."

Mr. Chairman, it is true that the Congress has not acted on the matter. It is true in the same sense that the Congress has not passed a resolution requesting the National Park Service not to put a cork on Old Faithful Geyser and sell steam to the nearest electric power producer.

In view of the rather abject record compiled during the test run of pay TV, one would not have supposed that any "guidance" was necessary to prevent the Commission from establishing subscription television on a permanent non-experimental basis.

Gentlemen, the Commission has asked us for "guidance." I feel we would be remiss if we do not provide it in an specific and clear a manner as possible. In this regard, there is pending before this Committee H.R. 12435 which I introduced with but one though in mind. It amends the Communications Act to provide that "Nothing in this Act shall be held to empower the Commission to authorize any person to engage in the broadcasting of pay television programs."

I urge you to recommend to the Full Committee that this bill be favorably reported and sent to the Floor for passage at the earliest possible date. Such action would provide the Federal Communication Commission with the clear intent of Congress and would prevent any recurrence of this seeming inability by the Commission to resolve the subscription problem.

Mr. DINGELL. I ask leave of the chairman that I may be permitted to summarize briefly the comments that I would have given to this distinguished subcommittee on this matter.

Mr. Chairman, for the record, my name is John D. Dingell. I am a Member of Congress from the 16th Congressional District of Michigan.

As you will recall, Mr. Chairman, I have long opposed the use of the free broadcasting spectrum to provide substantial financial profits to private individuals through the device of charges for receipt of broadcasts.

I believe it is a shame that we have to waste the time of this very busy committee to try to rectify an absolutely wrongheaded determination on the part of either the Federal Communications Commission or certain members thereof to establish subscription TV despite the clear expression of Congress to the contrary, and despite the economic failure, the visible lack of public acceptance, and outright public rejection. Despite the repudiation by Congress repeatedly and notwithstanding expressions of outrage from Members of Congress and oppositions from congressional committees, the Commission appears determined to go forward toward establishment of pay or subscription TV.

First of all, this proposal in the fourth order and report of the Federal Communications Commission is on the most doubtful jurisdictional grounds. The agency bottoms its so-called authority to go forward on this under section 303(g) of the Federal Communications Commission Act. A study of that particular section makes it very plain that it authorizes the Commission to "study new uses of radio." The section goes on to "provide for experimental use of frequencies" and then it finally authorizes the Commission "generally to encourage the larger and more effective use of radio in the public interest."

I see nothing in there that authorizes the erection of a tollgate at the family's television set and I see nothing that authorizes the use of subscription TV.

The history of the act is very clear. I can find nothing to indicate that subscription TV was in contemplation of the original authors of the Radio Act. I could find nothing in the amendments to the Federal Communications Act or the act, itself, authorizing the use of tolls and charges at the television set.

More importantly, the history of broadcasting in this country is entirely against this concept and I would point out that there is no showing whatsoever, even the most specious, that the use of pay or subscription television would be "in the public interest," as required by section 303(g).

So, I believe that jurisdictionally the Federal Communications Commission has no authority whatsoever to proceed in this direction. Certainly when the words "public interest" are considered in their proper context it becomes very plain that there is no authorization to the agency either on jurisdictional grounds or on the solid grounds of public policy to convert what is now a workable and working free television network in this country to pay television.

The Federal Communications Commission's own report indicates on the basis of its experiments that 30 percent of the American people will be unable, because of the economic cost of it, which will run something like $60 a month, to afford the cost of subscription or pay TV. It is obvious to me that this then does not meet the test of public interest upon which the Commission could base its powers and its judgments in that matter.

Second of all, Mr. Chairman, the proposal simply resurrects a great failure. The Hartford test was a total failure in two regards. One, it never achieved the number of subscribers that it had proposed. They had contemplated 50,000. They got less than 5,000, of whom a significant number were either complimentary or experimental users of the test.

In addition to this, it provided no new programing, no higher quality programing, and in programing it was a complete and total loss.

Now, there are technical problems, Mr. Chairman, which should be viewed very carefully by this committee. One of the things that this committee should query the Commission on very carefully is why are they diverting from free television a very valuable and a very broad portion of the spectrum into toll or pay or subscription TV?

As this committee well knows, the spectrum is badly crowded. There is a tremendous demand for business, for maritime, for educational, and for public safety use of the television spectrum. Overcrowding of these portions of the assigned spectrum has long since reached crisis proportions.

I am chairman of a subcommittee on the Small Business Committee of the House of Representatives on which my good friend, Mr. Broyhill, also has the pleasure of serving, and we have been much troubled in that subcommittee about the inadequacy of space for business, maritime, educational, and for public safety.

The recent riots of last summer tended to point up the fact that there is at this particular moment a gross inadequacy of spectrum in all of these areas but particularly in the area of public safety.

I have submitted a number of samples of communications from persons and particularly police chiefs and administrators in the law enforcement area pointing out the great shortage of spectrum and the problems which they have in terms of providing for the public safety in the event of riots because of spectrum shortage.

Mr. Chairman, this amount of spectrum could much better be used to provide for the public safety, than to provide for a silk-stocking

experiment on the conversion of a free resource into a toll or charge type of operation.

Now, Mr. Chairman, it is very clear that the proposal will not increase television services. As a matter of fact, a careful reading of the order and report of the Federal Communications Commission recently presented to the committee indicates that the Commission expectation is that the proposal will convert what is presently free television spectrum into pay or toll TV so that in effect a portion of the present spectrum will be siphoned out into television for hire rather than in affording new broadcasting opportunities.

So, what the fourth order and report will actually do will be to close much of the spectrum which is presently available to persons of the lowest income, and to deny them opportunity to the high quality programing the Hartford test says will not be forthcoming. Now, this fourth order and report, Mr. Chairman, is an extraordinary document. It asks congressional guidance. And I believe this committee can feel very free on that basis to scrutinize very clearly, and advise freely as to its will. I believe this committee can feel very free to come forward with appropriate legislative guidance to the Commission without concern on the *Pillsbury* decision.

It is interesting, and I believe the committee should note this, that that device is signed by only two of the seven Commissioners, and by one, who, while signing it did not endorse either the document or its contents.

Now, I believe another question of public policy that should arise is that subscription television will interfere with the implementation of public television. First of all, it will take Commission time. Second, it will compete for writers, technicians, artists, engineers, and other technical and engineering personnel now presently in short or in inadequate supply.

It will compete for public acceptance and viewers' time. It will also compete for money and investment. It will involve the Commission in matters of controversy which will preclude adequate fostering of public TV and also an adequate approach to an abundance of other problems which urgently require attention of the Commission. These should not remain swept under the rug while the Commission rambles so far afield to tilt with windmills like subscription television.

Public television, I believe, offers a much better device to get new quality programing and the type of programing which the Hartford tests prove that the subscription television cannot, will not, and does not give. I believe that the Commission and this committee should take vigorous action to see to it that public television is fostered. We should not allow the kind of outrage that we see being prepared for our people in subscription TV.

There are many questions that the Federal Communications Commission should better use its time with. Many are problems which have long been before it which urgently require solution.

First of all, there is the ancient and hoary problem of clear channels, one which has been around for as long as anyone can recall, and on which very little progress has been demonstrated of late. There is the problem of providing adequate service in the so-called white areas and the problem of inadequate service in many of the other areas in the radio AM band use.

There is the gross shortage of business, educational, fire, police, and public safety radio spectrum. There is the question of perfecting Commission rules to more expeditiously finish the business before it.

I will point out that a careful scrutiny of the way the Commission proceeds in most of its matters indicates that once a matter falls before the Commission, absent some extraordinary happening, it can be expected to outlive any of the litigants.

Now, it is also fair to say that the Commission should devote itself to a rigorous attention to the problem of price manipulation of stations and to the trafficking in stations. There is more careful attention needed to devices which will stimulate new advances in programing. It is also necessary that the Commission should devote itself to the achievement, in the public interest, of control, of licensing, and of fair regulation of CATV and CATV charges. CATV is growing like Topsy, with the most minimal attention by the Federal Communications Commission, which has taken inadequate steps to control, regulate, and direct its growth.

I believe that if the Commission is sincere in wanting to increase the amount of programing which is available to the American people, the Commission should be exploring wire alternatives to STV rather than to be engaged in the active use of trying to prostitute or to convert a portion of the broadcast spectrum to toll or pay or subscription TV.

I believe last week the Commission could well have dedicated itself to the very broad authority they have, some of which they cite in connection with their fourth order and report, to advance the science of broadcasting and the better use of the airways.

Now, Mr. Chairman, I want to give a few more thoughts, if I may.

First of all, subscription television raises more questions than it answers. How can we be assured that there will be no siphoning of good programs, of spectaculars, outstanding sports events, programs, and stars and persons of this kind who have achieved great acceptance on commercial television? The Commission in its order and report indicates that they cannot give this kind of guarantee and assurance.

The fourth order and report proposes to prevent sports from being siphoned off by the 2-year limit which was discussed yesterday in this committee by Chairman Hyde. Most of the membership of this committee who listened very attentively recall the difficulties that the Chairman got into with this statement.

The fourth order and report very clearly indicates that the cost, the opportunities, and the advantages of subscription television are such that financial arrangements will be possible to overcome revenue losses and other difficulties that might be anticipated in the waiting period of 2 years. In fact, the so-called waiting period of 2 years is really one season, let us say, of football and baseball, and not 2 years, at all.

These are some of the problems that I believe have not been adequately treated in the report.

In addition to this, Mr. Chairman, in other types of programing the Federal Communications Commission proposes to instruct STV operators as to program content and schedule content. I would point out that this again raises grave questions under the Federal Communi-

cations Act, since the act precludes direct instructions to and interference in programing by the Commission.

These are just some of the questions that are raised by the fourth order and report.

Now, Mr. Chairman, I want to make it very clear I do not oppose subscription television entirely by wire with no concommitant use of frequencies. I feel if a person wishes to provide that service it is entirely appropriate that he should be allowed to do so. I believe that service would not be using a badly clogged spectrum which properly belongs to all the people of this country.

I feel very strongly that we should not convert the public airways into a device that will favor 70 percent of the people and exclude 30 percent of the people, according to figures of the FCC.

H.R. 12435, which I have authored, is presently before this committee. It would bar STV. I must confess I drafted that bill in great haste when I saw this fourth order and report. I did so in the secure hope that I would get something before this committee and I want to tell you, Mr. Chairman and members of the committee, how pleased I am to see your attention to this great problem.

I understand there have been some efforts by the persons interested in subscription television to place comments in public places and newspapers and periodicals critical of this committee. I believe this committee is carrying out a very valuable function, of oversight. This it must do to assure proper administration by the Federal Communications Commission.

I want you to know, Mr. Chairman, that I certainly applaud what the committee is doing.

Lastly, referring again to H.R. 12435, I feel very strongly that subscription television is a bit like a viper. You have to squash it in the egg and not let it get out to create mischief. I believe that vigorous action by this committee to destroy it before it is able to get into the position where it is going to cause mischief in our society is very much in order. I hope this committee will devote itself very carefully to the thought of getting out legislation, not necessarily H.R. 12435 or any other particular legislation, but just legislation which will stop subscription television for good and all. This committee, the Congress, and the Federal Communications Commission should devote themselves to matters of vastly more importance and not fiddle around with something which won't work, which is mischievous and which converts a portion of the public resources to private gain in a manner which is thoroughly inconsistent with the history and practices of the Congress, of the Federal Communications Act, and of the radio and television industry.

Mr. MACDONALD. Thank you very much, Mr. Dingell. You have made a fine presentation of your point of view.

There are two things that entered my mind when you were giving your very fine presentation. I know you have always fought very hard for the public interest as a member of this committee and as chairman of the Small Business Committee. Two things entered my mind.

I was not quite sure of the reasoning behind your endorsing pay TV by wire. Does that mean by cable?

Mr. DINGELL. I did not endorse it, Mr. Chairman. I simply said I had no objection to it. If the Commission were to choose to authorize TV by wire, I said I would not have any objection on the basis of the knowledge that I have at this particular time.

We have, for example, CATV right now and under the orders of the Commission CATV can originate programing. This, to all intents and purposes, is really pay TV by wire already. It should, however, be most carefully controlled in this regard.

I would point out that neither the charges nor the practices in that particular industry are being adequately scrutinized by the Federal Communications Commission while they are tilting with this other windmill.

Mr. MACDONALD. The other question I was going to ask, Mr. Dingell, is this: Is it not true as I have heard and as has been sent to me in the mail that the AFL–CIO has endorsed the proposition of pay TV and the reason I ask this is because you used the phrase that this would just benefit the silk-stocking people and the AFL–CIO is not known for caring that much about the silk-stocking type of person, so-called.

Mr. DINGELL. I received a pronouncement from the AFL–CIO some time back which would tend to indicate that they have changed their position of opposition to subscription or pay TV. I must confess when I saw this I was very busy and I did not read the particular pronouncement with the care that I think it probably deserved.

I would just tell the committee my old dad was the founder of a trade union. His name is on the charter. He was discharged for union activity in 1914 and was sent west to die. So, I have a very strong pro labor philosophy.

But I recognize that the AFL–CIO is entitled to be wrong just like everybody else. I certainly would accord them that luxury. Although I have great regard for them and high respect for them, I do not propose to let them lead me into error, too. So, I am still opposed to it. I would have to say that I think even the AFL–CIO is entitled to a mistake every once in a while.

Mr. MACDONALD. The last thing I think we ought to clear up for the record.

I think in your statement you said just three Commission members signed the report.

Mr. DINGELL. That is the way I read it.

Mr. MACDONALD. Actually, those three members were a panel set up to report to the Commission.

Mr. DINGELL. That is right.

Mr. MACDONALD. It is my understanding that even though Mr. Wadsworth's position on it is a little ambivalent, the three did sign it and sent it to the Commission and then all members present, and I think the Commissioner yesterday said there were six present and one absent, did sign the final report.

Mr. DINGELL. That may be correct, Mr. Chairman.

I was most struck in reading the document that they submitted that two signed it and one appeared to hold his nose and sign it, Mr. Chairman. I couldn't get any more out of it than that.

Mr. MACDONALD. Mr. Van Deerlin.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. Dingell, is there any question in your mind as to whether the FCC would have jurisdiction to regulate subscription television if it were delivered by cable, rather than through the air?

Mr. DINGELL. Well, you run into this problem in connection with the regulations. The FCC has control of rates for regulatory purposes in interstate commerce. Now, there are certain exceptions that have been made to this in areas where TV broadly affects intrastate commerce and, of course, they have control over rates in international carriage. So, the FCC would have the power of regulating rates for services of this type if it were to be sent by wire.

The other regulation would be carried out by communities and States under their appropriate State and local laws where the transmissions were entirely intrastate in nature.

Mr. VAN DEERLIN. Would it be your idea that if the Commission did have jurisdiction that it should exercise some of the restraints over programing, on subscription television, that it envisions doing on over-the-air delivery?

Mr. DINGELL. Well, I am not altogether sure, first of all, that the Commission has the authority under the law that it professes to control programing on subscription television over the airways. I would not be altogether sure whether it would have the authority to regulate its programing over the wires if it were to try to assert that.

I have not studied these points in any great depth, but the consideration I have given to the matter indicates to me there is a grave question whether the Commission would have this authority either under the Federal Communications Act or under the Constitution.

Mr. VAN DEERLIN. You do not limit this to subscription television, then?

Mr. DINGELL. No.

Mr. VAN DEERLIN. You would doubt that it has the authority over programing in regular commercial television?

Mr. DINGELL. That is correct.

Mr. VAN DEERLIN. I notice you use an argument against subscription television that was used against public television—that it would compete for talent and, notably, that it would compete for talent with public television.

Do you think this is a very strong argument?

Mr. DINGELL. I am not so troubled about public television competing with, let us say, the general area of commercial telecasting. Apparently the networks and the stations were not particularly troubled about this and generally tended to support the legislation establishing public television that this great committee just recently guided through the House.

But, public television is a rather difficult situation. It is new, young; it hasn't got its financing in order yet. It has not gotten all its stations on the air. The corporation has not yet been fully established and it is not in a position where it can really stand additional competitive pressures, in my opinion.

My feeling is that if we are interested in good, high-quality programing in this country, good television, television that will offer the things that the Commission said it would offer but the fact it did not, that we should encourage this by public television, by encouraging public television, by affording a climate in which it can grow and

prosper. I think the Commission is very broadly disregarding the public interest when it ignores the real prospect and promise of public television. I think it ought to be fostering public television, seeing to it that it has the best possible climate to grow in rather than going off and making specious arguments as to its jurisdiction to create something that nobody really wants.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. MACDONALD. Mr. Broyhill.

Mr. BROYHILL. Thank you, Mr. Chairman.

As usual, our colleague from Michigan has provided us with a great deal of information on this subject as he does on other subjects.

There has been discussion in this committee, and you have discussed it too, about the statements that the FCC has made concerning the desirability of congressional guidance. You have been a member of this committee for some time. As far as you know, has the Federal Communications Commission made any formal recommendations to the Congress or to this committee concerning STV?

Mr. DINGELL. First of all, I can recall no request by the Commission for guidance from the Congress previous to the fourth order and report. They have said from time to time if the Congress does not give them guidance they will do so and so. But that is very, very different than a request for guidance.

I don't view it to be the power of the Commission to dictate to the Congress when we are going to tell them what they should do. They are an arm of Congress, and subservient to it. They have received a number of expressions from this committee, from the Senate Commerce Committee, from members of this committee, from Members of Congress generally, all of which without exception, to the best of my recollection, have been hostile to subscription television and have been opposed to the Commission taking any action without further direct instructions from the Congress.

Mr. BROYHILL. You would agree with me that the FCC mistakenly assumes that congressional silence signifies some consent to the course that the Commission is presently taking?

Mr. DINGELL. I would say that in my opinion it almost marks arrogance. I don't think this is the relationships that the Federal Communications Commission should have with the Congress. The Congress is the dominant arm and has delegated certain authorities to the Federal Communications Commission. The Commission not infrequently tends to lose sight of this just as it tends to lose sight of questions of public policy laid down in the act.

Mr. BROYHILL. I missed the first part of your verbal statement. I don't know if you read it in that part but I was amused by your statement, in your written statement here, which says:

> It is true that the Congress has not acted on the matter. It is true in the same sense that the Congress has not passed a resolution requesting the National Park Service not to put a cork on Old Faithful Geyser and sell steam to the nearest electric power producer.

Mr. DINGELL. I also had in my statement, but I took it out, that the board of directors of a well-known automobile company had not felt it necessary to pass new resolutions against the issuance of unsuccessful models of automobiles. There is a certain element of commonsense in this that I think has been lost on the Commission.

Mr. BROWN. That is no longer their problem.

Mr. BROYHILL. Thank you, Mr. Chairman.

Mr. MACDONALD. Mr. Rooney.

Mr. ROONEY. Mr. Dingell, I want to thank you for your excellent presentation this morning.

I have one question about the Hartford experiment. I understand this has been going on for 5 years. If it is such a dismal failure, why would they not have gotten out of business 5 years ago?

Mr. DINGELL. I think this is a question that the Commission should ask.

It is my understanding, if you read on page 7, I summarize very generally the experience that has occurred with regard to the Hartford "experiment." I point out how there has been a notorious failure by subscribers to subscribe. There has been a notorious failure in terms of production of new and special types of programing that they had looked for. The fare has been entirely sports and movies which have only been slightly newer and not at all different in kind than is available with regular free TV. Indeed, that programing was for the same mass audience to which the networks play.

I believe that statistical information is available to show, and I think the committee could well direct its attention to the fact that programing and financial fiasco was kept alive only by generous subsidies from the firms which conducted the so-called test.

Mr. ROONEY. Mr. Dingell, don't you feel that if this is going to have any effect on the taxpaying public that it would be good in effect because it would provide the networks with a little competition, thereby giving the American public better programing?

Mr. DINGELL. I have been as critical as anyone of the networks and I believe all of my colleagues on the Commerce Committee recall that it has been a rare day when the networks and I have traveled the same path. But I do feel very strongly that if subscription television was going to offer anything new this committee probably should support it if it were going to meet the other tests of the public interest.

The problem here is that the Hartford test has already proven conclusively that subscription television does not offer new programing, does not offer quality programing, does not put any appreciable number of ballets or operas or public-interest programs, debates and forums on the air.

What STV will give is simply programing for the mass audience because that is the most economically viewable and maximizes the financial returns of the entrepreneur. In other words, he will get the most money back from mass audiences, and he will program to earn the most money, not from the standpoint of the highest quality.

So, I think the matter has been tried and found wanting. I don't think we will get quality programing from STV.

Mr. ROONEY. I will yield to the chairman.

Mr. MACDONALD. Mr. Dingell, I would like to point out that although I think it is a mistake for the FCC to get into the business of programing, in the order they pointed out that the pay TV would have to put 10 per cent of their air time into so-called ballet, public service type of things.

Mr. DINGELL. I really question whether or not they have the authority to do that. That is my problem. I don't see that under the Federal

Communications Act that they have authority to dictate programs or program content.

Mr. MACDONALD. I say in the order that we have been discussing and you have been discussing it does provide for 10 percent of the type of programing that you say is not going to be made available.

Mr. DINGELL. If you were going to look at submissions to the American people by the networks you will find that they are turning out about 10 percent of this kind of time. They might even, perhaps in some instances, be doing better than this, depending, you know, on the question of definition. So that, what you are really doing is converting what we are now getting for free to a subscription charge-type service. That is what you really are really doing with this subscription TV.

Mr. BROWN. Would the gentleman yield to clarify a point here?

I understood NBC said they were spending 25 percent of their time on public service broadcasting. I did not understand that to include the general definition of cultural broadcasting. I thought the FCC limitation was only 90 percent of the time could be used in pay TV on sports and entertainment and left the other 10 percent open as to what they would use it for, whether it was news or something else. Is that right?

Mr. MACDONALD. That is my understanding.

Mr. ROONEY. I have no further questions.

Mr. MACDONALD. Mr. Harvey.

Mr. HARVEY. I want to congratulate my colleague from Michigan on a very fine statement.

As I understand his position, you are unmistakingly opposed to subscription television?

Mr. DINGELL. Totally.

Mr. HARVEY. But looking at your bill and trying to interpret your bill, if I place the right interpretation on it, let me say, your bill would not necessarily prohibit subscription TV forever in the future but rather your bill says subscription TV shall not come into being until Congress has held hearings and made the decision on it.

Is that correct?

Mr. DINGELL. In effect that is what the bill does.

I believe this is a congressional decision. I would point out, as I did very briefly in my comments, that the bill was drafted in haste because of the needs of the situation.

I believe on careful scrutiny the committee may find that there are technical defects in the bill. But I believe the intent of the bill is sound and would protect the public interest.

Certainly if one of the problems that might rise is that the bill as drawn might absolutely preclude the use of wire pay TV, this was not my intent. I intended to limit it to the use of the broadcast spectrum. I have been advised that some people consider the wire to be a part of the spectrum.

I certainly did not intend to include that.

Mr. HARVEY. What you are trying to do in your bill, what you are trying to accomplish, let me say, is to transfer jurisdiction of this whole subject from the FCC as they have claimed it right to this committee where you feel it belongs.

Mr. DINGELL. I am not trying to transfer it. I am trying to make clear where the authority lies, and it lies here, in this committee.

Mr. HARVEY. The effect of it would be a transfer and to relieve the FCC of any jurisdiction, let us say, and to put it in this committee.

Mr. DINGELL. To make it very clear that they have no jurisdiction. I challenge the fact that they do. I support strongly the jurisdiction of the committee and I think as a matter of public policy alone this committee should make the decision and not the Federal Communications Commission.

Mr. HARVEY. I subscribe wholeheartedly to that view and I have expressed it, myself, that I think it should be this committee and this Congress that should decide whether we have subscription television or not and not the Federal Communications Commission.

Mr. DINGELL. That is correct.

Mr. HARVEY. I have no further questions.

Mr. MACDONALD. Mr. Ottinger.

Mr. OTTINGER. Thank you, Mr. Chairman.

I am glad to hear from my good friend from Michigan for whom I have the highest regard. Very few times in my career have we disagreed on anything but I think this may be the first.

I foresee the day, and I think very near in the future, when there will be available to the public the ability to select on their home television sets a wide variety of programs retrieved from a TV library, be it operas, symphonies, baseball games from the past, fights, whatever the viewer may desire. The television set will be hooked into a computer and you will be able to have a range of opportunity through your television set that is completely beyond your ability at the present time.

We will need a system of pay television to accomodate this kind of library-retrieval selection. The current experimentation will lay the foundations for this.

Mr. DINGELL. You want to remember this is not an experimentation. The "Fourth Order and Report" does not set out experimentation. There is no question but what under the act the Commission and under the resolutions of this committee, has authority to experiment. There is no experiment here. The FCC order looks to commercial STV.

Mr. OTTINGER. I would think that going forward to authorize a national pay TV system would be a very desirable development in terms of offering a range of opportunity to the home viewer and that it is something that should be considered.

I do not quite understand why the gentleman prefers that the public pay for its television through advertising, and it does pay, it pays in terms of additional prices that are charged for the goods advertised, rather than having them pay directly? The end result is having the TV screens of the Nation cluttered with advertising instead of offering a facility through which programs could be offered commercially without interruption.

Mr. DINGELL. First of all, I would say to my good friend we don't disagree very often and I have a very high regard for the gentleman from New York and he is a very valuable member of this committee and the Congress but, you know, since we are looking into the future and nobody really on this committee gets a crystal ball with their election certificate but I have tried to indicate the mischief that I foresee in this.

First of all, I resent the idea of using a clogged radio spectrum for subscription TV. We need it for business, we need it for radio, we need it for public safety. We need it for public television.

Now if something is going to be done it can be done in the wire end of the communications business. We can send these signals by wire and I have indicated to my good friend I have no objection to this.

Mr. OTTINGER. If I may interrupt the gentleman, that imposes a tremendous burden on the public, though. If we are going to have available this retrievable library system about which one reads and which I believe is in the very near future a possibility, why should one limit it to the cable system where a person has to pay a substantial charge per month to bring in the cable?

Why should not the public at large have available to it the ability to select any movie that they want that has been shown in the past 20 years? Would you exclude that?

Mr. DINGELL. Public acceptance first of all of wire TV has already been pretty well established in this country through the medium of CATV. I do not view it as being a hardship. I would point out and I think this committee should study the amount of spectrum that is taken up by one single television broadcast band. This is a much poorer use of a resource. Especially when many stand idle, or are to be converted to something as monstrous as pay TV.

I think you will find that on that one single band you can set up a tremendous number of bands for police, business, educational, maritime radio. These are important uses that are being grossly disregarded by the Commission.

The Commission has been promising me informally now for about 2 years that they were going to do something about this. I have seen no action.

Let me say to my good friend it may be that in the orderly course of events we are going to come to the point in this country where we can have some extra spectrum space after we have gone over and reviewed very carefully the total spectrum resource that we have in the Nation and after we have made appropriate allocations to space and defense and to business and to Government and to firefighting and to police and AM broadcasting, FM broadcasting, short wave, microwave, UHF–TV, VHF–TV, and to the public television, if at that time it becomes appropriate that we should make a silk stocking service available for persons of advanced means to retrieve old programs or to get brand new movie spectacles, spectaculars for hire on subscription television, I believe the legislation I have introduced authorizes this committee to take that matter under consideration and to go forward. I believe, however, we have not yet arrived at that time.

I think that is probably where we disagree.

I think if we were to authorize subscription television at this time we would find, very shortly, that we would have a very peculiar phenomenon.

First of all, if it took, and I am not sure it will but there is a possibility that it will, we wind up with every television set in this country having a coin box on the side, I don't think you can justify that to your constituents.

I know very well I could not, certainly to the 30 percent that the FCC says will be denied it. Second of all, if this thing did take, I

would be well satisfied it would have the same advertising on it that it has right now.

I do not like some of the advertising, but I find some of the advertising is better than some of the programing I get.

Mr. OTTINGER. That is more a reflection on the poor quality of programing than the excellence of advertising, I think.

I must say that I would be very much concerned if pay television were permitted to carry advertising in addition to making a charge for its programs.

I do think there is a tremendous opportunity for the future here. If we adopted your philosophy, not necessarily your legislation, because I think Congress ought to make the decision, but if we adopted your opposition to subscription TV, we would be denying something which is very exciting to the general public.

I think it is a subject that deserves further exploration by the Congress with an affirmative outlook.

Mr. DINGELL. I think the committee should demand a full accounting from the Federal Communications Commission as to why this abundance of problems are now strangling them, why they have not evolved an expedited procedure to handle the matters, why they have not made a better allocation of the spectrum, why they have not solved the clear channel problem.

They are up to their ears in problems and yet they are creating new mischief at a time when it is not desirable.

Mr. OTTINGER. Well, now we are back on common ground. I agree with the gentleman completely.

Mr. MACDONALD. I am sorry the time of the gentleman has expired.

Mr. Brotzman.

Mr. BROTZMAN. Thank you, Mr. Chairman.

I am sure you have followed this subject over a period of years as a member of this committee, is that not right, Mr. Dingell?

Mr. DINGELL. That is correct.

Mr. BROTZMAN. To follow up on Jim's questioning here, there really are two problems as I see it. One is jurisdictional and then there is the substantive question of—is subscription TV good?

Actually most of your remarks go to the substantive matter, but your bill, if I understand your remarks, is for the purpose of insuring retention of jurisdiction in the Congress.

Is that correct?

Mr. DINGELL. That is correct.

Mr. BROTZMAN. Now turning to your statement just for a moment, I understand the jurisdictional question, have you followed the Hartford trial over a period of time?

Mr. DINGELL. I have made a study of the comments on the Hartford trial as included in the Commission's fourth order and report.

Insofar as having scrutinizing it or observed how it worked I must confess I did not.

Mr. BROTZMAN. How was this set up? By that I mean what opportunities were afforded to different agencies and different competition to participate in this particular trial?

Mr. DINGELL. I did not——

Mr. MACDONALD. Mr. Brotzman, if you will excuse me, the people who ran the experiment will testify and I think they will probably have all those answers.

Mr. BROTZMAN. I am more interested in this, though.

There is a purpose in my question. This is a foundation question I am asking you.

That is, I wondered if this committee was consulted as this thing developed concerning some offer to different individuals to compete. I wondered if you might know that.

Mr. DINGELL. I recall no consultation with the committee during the time I have been a member and that goes back to about 1956 as I recall.

My recollection is that they had a hard time to find someone to carry the test out.

Mr. BROTZMAN. There was an editorial in this morning's paper.

Mr. DINGELL. The Washington Post?

Mr. BROTZMAN. Yes.

Mr. DINGELL. I am an avid reader of the Washington Post, but I find I am reading them more and agreeing with them less.

Mr. BROTZMAN. Not to get down to their particular attitude here but I note one thing. I had been under the impression that there was only one test or one experiment that had been run in the Hartford area. I find the editorial referring to the fact that there have been test runs in several cities.

Mr. DINGELL. That is correct. There was one up in Canada, around Toronto. There was a wire subscription TV service that was instituted out in California——

Mr. MACDONALD. There have been about six.

Mr. DINGELL (continuing). Which wound up in a big fight, amendment of the Constitution or referendum out there that held it to be unlawful. Finally this was set aside by the court. While the court case out there was successful the patient died.

For one reason or another the entrepreneur who was running that particular test went broke.

Mr. BROTZMAN. Are we going to have testimony about these other experiments or are we going to limit ourselves to just the Hartford experiment?

Mr. MACDONALD. I am sure that the people who ran the test in Hartford have the knowledge of what happened in the other tests and I am sure they can be questioned about them.

Mr. BROTZMAN. Were they involved in these tests, too?

Mr. MACDONALD. I don't believe so but I am sure they must have studied them before they invested an amount of money in the Hartford test.

Mr. BROTZMAN. Turning to your testimony on page 7 regarding the Hartford test, where did you find these figures? You said the Hartford trial was supposed to begin operations after 2,000 subscribers were obtained and so forth.

Mr. DINGELL. That comes out of two places. One is the report of the Commission and the other is the comments that were made by some of the individuals who have testified before the Commission in connection with this subscription television proceeding. I believe that this committee could well scrutinize the statements. I would refer particularly to the statements made by the National Broadcasting Co. which was a rather fine presentation and also some statements made by Motorola in connection with that which I believe were very useful.

Mr. BROTZMAN. That was testimony before the FCC?

Mr. DINGELL. Before the Federal Communications Commission.

Mr. BROTZMAN. I just wondered where these figures came from because they are somewhat dramatic as to the public demand.

Mr. DINGELL. I believe the Commission could give you precisely the same figures.

Mr. BROTZMAN. I thank the gentleman.

Mr. MACDONALD. Mr. Kornegay.

Mr. KORNEGAY. Thank you, Mr. Chairman.

Mr. Dingell, I am sorry I was not here to hear your statement. I had another meeting I had to attend. But I will read it over and study it with care after this meeting. A couple of questions do occur to me based on some of the things you have said since I came into the room.

No. 1, your concern for the radio spectrum, the utilization of that spectrum. As you know I share your concern over the fact that there is some question about whether it is being put to its best possible use and whether or not the Commission is taking the necessary steps to see that these rapidly increasing public services that are demanding more and more space on the spectrum, whether or not that space is being made available for them.

In that connection, though I raise this question. As I understand it, most of these STV stations, if not all of them, will be U's—the ultra-high-frequency stations——

Mr. DINGELL. We have no assurance they will be using UHF or VHF bands. They have established no criterion for that.

Mr. KORNEGAY. I have heard from some source that they would expect to use certainly primarily the UHF as opposed to the VHF. As you and I both know, UHF's have gone begging for years. They were there to be used but for economic reasons as I understand it there just has been no big demand for them.

The V's are more powerful and, of course, are much better and up to the time we provided for all channel sets there was the problem of reception for the public to receive the U's.

I just wondered, pointing that out, if you have given any second thoughts to the business of allocation of spectrum.

Mr. DINGELL. Not really.

Mr. KORNEGAY. These U's are already provided for. The space is there. If additional measures are taken to make them more attractive would it not increase the variety of television to the American public?

Mr. DINGELL. I believe the Hartford test proves first of all that you are not going to have any big rush into the marketplace by investors to engage in subscription television.

But second, with regard to the spectrum problem, I have been trying for years to get the Federal Communications Commission to use some of the unused UHF bands for business, education, and public safety radio.

Now the Commission, I understand, is coming forward with some very, very halfhearted and rather inadequate measures to increase the number of bands by shaving the bands in half that they now make available—at least this is what I understand they contemplate—that they now make available for business, educational, and public safety broadcasting.

First of all, this is going to require changes in equipment which are going to impose additional costs.

Second, it will not provide additional bands that are needed. We can make many more by doubling the amount of bands we have. This is particularly so where you are trying to provide small communities a public safety band so that all of your small communities can intercommunicate. Every major city now is surrounded by small communities, and there is great need to provide a means of intercommunicating for the small communities in the event of a riot or other public disorder, or in the event of a calamity like hurricane, floods, or major fire or something of that kind.

I think that the UHF spectrum is going to have to be—a portion of it at least is going to have to be utilized for this. As a matter of fact, the Federal Communications Commission may be compelled in the not too distant future to restudy the entire allocation of bands in the UHF–VHF, because it may be that each one of these UHF–VHF bands is far too wide for the needs and far too wide when you consider the total present and potential demands on the spectrum.

So I think before we go on into this spectrum we had better be sure that we have arrived at an appropriate policy allocation considering future needs of the entire spectrum which is something which I think has been very much lacking on the part of the Federal Communications Commission.

Mr. KORNEGAY. Do you feel there is any demand or a substantial demand for STV?

Mr. DINGELL. I have seen none.

The Hartford test tends to indicate it. You see, we have two ways you can deliver STV, one by wire and one through the public broadcast spectrum.

I have asserted this morning no objection to the delivery of this signal by wire. I have asserted a very strong objection to delivering it through the airways.

If the FCC wants to do it, fine. And if it is a monopolistic service of this kind where they say they are only going to have one per community is delivered by wire, it can be regulated but it is extremely doubtful under the law whether the communities concerned, the States or the Federal Government, can regulate the charges of delivery through the free public airways.

Mr. KORNEGAY. Of course, if it is delivered by wire it does not utilize any of the spectrum but at the same time they must, as I understand the proposed plans, utilize an existing station and that station has received an allocation of the spectrum.

So, whether they use the spectrum or use the airways three-fourths of the day, wire or subscription TV, that part is still reserved on the spectrum so we are not accomplishing anything there to provide additional services on the spectrum.

Mr. DINGELL. It really does not work out that way.

It would be possible conceivably that you could authorize the use of an existing channel for a part of the day free by airways and a part of the day to require delivery of the signal by wire for charge.

This would not work out this way. This would not be very good, from a public policy standpoint. This is not to say you could not put an adapter on the side and run a wire in there through your telephone cable because it would probably come through A.T. & T. or the I.T. & T. or the local independent telephone company, and just have an addi-

tional channel on there that would not have to come out of the U or the V or any of the 1 through 56 or 75, whatever channels are now on the all-channel sets.

Mr. KORNEGAY. Thank you for coming to testify.

Mr. MACDONALD. Mr. Brown.

Mr. BROWN. Mr. Dingell, your bill, H.R. 12435, is not aimed at CATV?

Mr. DINGELL. No; it is most emphatically not. I recognize that CATV is now a reality. Although I had some doubt, although I had been critical of the Federal Communications Commission for not having adequately regulated it, it is not directed in that direction at all.

Mr. BROWN. I agree with you that Congress ought to speak on this subject and I gather that is the main thrust of your bill that you want it to speak negatively on the subject of subscription TV.

Mr. DINGELL. This is correct.

Mr. BROWN. I cannot see any reason for deferring this decision by the Congress or the FCC in anticipation of the FCC handling all its other problems first because I think we will never get around to making that decision.

You don't mean that do you?

Mr. DINGELL. I fell it is so low a priority that it can well be deferred to some time in the next century without any great loss to the public interest.

Mr. BROWN. It seems to me as long as we have started this hearing we might as well come to some resolution of the problem. I think it would be a waste of time to hear all this and then put it in limbo.

Mr. DINGELL. On that we are both in agreement. I certainly hope the committee will, in its wisdom, report out legislation which will prevent subscription television as contemplated in the fourth order and report.

Mr. BROWN. I understand you have no objection to the use of microwave and wire systems to have pay TV utilized through CATV outlets?

Mr. DINGELL. I really assert no objection to that at this time. But I feel it should be approached only after hearings by the FCC to explore all the circumstances.

Mr. BROWN. I find myself a little bit at a loss to understand how there would be siphoning off of talent and competition for writers, technicians, and FCC time, and so forth, if this were on the wire and not on the spectrum.

I don't understand that.

Mr. DINGELL. I think you have to come to the fundamental decision as to whether or not the free public airways which are presently misallocated—if you want to use the term—which are grossly overcrowded in some areas and which are entirely unused in others, should be converted to subscription television.

Mr. BROWN. I am talking about wire pay TV.

Mr. DINGELL. With regard to wire I have indicated I really have no objection. If we were to go to wire television we probably would have some siphoning off of those particular talents which I believe are in short supply in this country.

Mr. BROWN. Do you think wire TV would hurt free TV in the same way that it would hurt by the——

Mr. DINGELL. Not entirely, because different factors come into play.

For example, you have the question of wire charges. You have the question of regulation which you would have at least insofar as charges for the service delivered by wire.

Mr. BROWN. I am talking about the siphoning off of writers and technicians.

Mr. DINGELL. Conceivably there would be some of this siphoning which would take place.

Mr. BROWN. This is also true of public broadcasting?

Mr. DINGELL. It would affect public broadcasting.

Mr. BROWN. And public broadcasting would affect free TV; is that right?

Mr. DINGELL. Obviously when you have a marketplace and a new factor comes in there is going to be some interaction take place.

Mr. BROWN. What percentage of the spectrum would be used for pay TV under the present regulations or the proposed regulations that the FCC has set up? What percentage of concern do we have here about whether that spectrum is going to be used or misused?

Mr. DINGELL. I can't give you a precise figure, but I can say that the FCC says that approximately 83 communities will be involved. In those 83 communities and in each one of those communities there will be four or five stations, UHF's and VHF's. One of these can be converted to a subscription television station either in its entirety or in part.

Mr. BROWN. You are talking about these UHF stations, that we tried to encourage, that are not on the air yet?

Mr. DINGELL. Conceivably two things could happen.

One, you could convert an existing UHF or VHF channel which is vacant, or, two, you could convert an existing channel, one which is presently used for UHF or VHF, to subscription TV.

I could not prophesy without a very careful study what would happen in a particular place.

Mr. BROWN. My question is: How much absorption or sopping up of unused spectrum or presently used spectrum is this really going to create? This is one of the issues in your discussion.

If you are going to permit use by pay TV of existing VHF station channels or UHF channels presently allocated but not operating, I don't know how much concern I would have over the spectrum being taken away from the needs of police departments and fire departments, and so forth.

Mr. DINGELL. The answer is that I cannot sit here and make you a flat prediction as to what percentage is going to go. I cannot tell you which of the 83 communities in which they are eligible for this "U" will have a station set up which will have an unused UHF or VHF channel and in which of them you will see an existing "U" or "V" pulled from the present licenses on the free spectrum into the subscription spectrum.

Mr. BROWN. You have suggested this is a serious part of the problem under this issue and I wondered how serious that problem is.

Mr. DINGELL. I think it will vary from community to community, according to the market situation.

Frankly, I think either happening is a bad one at this particular time.

Mr. BROWN. Do I understand you would concur or not concur in the

FCC's right to regulate program content if we have pay or subscription TV?

Mr. DINGELL. As I understand the law, program content cannot be regulated on a day-to-day basis by the Federal Communications Commission.

Mr. BROWN. They were talking about percentages. I am talking about their proposed regulation of pay-TV.

Mr. DINGELL. I think this would raise questions which would have to be reviewed by the courts before we would have a final answer as to whether or not they do have authority. But more importantly, I think that you have to look at the awful thicket that this regulation is going to lead the FCC into. First of all, it will lead to a fight. Then they are going to have to determine whether these people are carrying forward their responsibility.

With a commission that appears to be as overworked as this Commission appears to be, or at least one which is so clogged with minutiae, it is doubtful that they will get down to this question.

Mr. BROWN. I would like to get your comments again because I did not quite follow them when you were in your colloquy with Mr. Ottinger about the desirability of network executives and advertisers in free TV determining what programs shall be aired and the Public Broadcasting Corp. board in the ETV bill that we just passed deciding program content and the undesirability of people determining what they are willing to pay to see.

I don't quite follow how it is desirable for this board of directors of Public Broadcasting and the network executives and advertisers to make that determination in those two areas but it is not desirable for people to be able to put in their quarter or whatever it is to see what they want to see.

Mr. DINGELL. You mean to pay the quarter at the box to decide what they want to see?

Mr. BROWN. Yes.

Mr. DINGELL. First of all, we don't know whether they will do it on a flat charge basis or do it on a quarter in the slot basis for a particular program.

The fourth order and report is sufficiently far from final implementation that it could undergo many changes before we get at this.

First of all, the Public Television Corp. that we set up in the public television bill is not going to dictate programing. We tried very hard to insulate the people of this country from that.

Mr. BROWN. They will be making a determination about where the Federal money will be spent for program development.

Mr. DINGELL. They will. They will make some determinations of this kind and I hope they will be wise ones.

But I have to say that the marketplace enters into what happens on free TV now. If a program is not watched the advertisers drop it. I recognize that we have to afford management the wisdom to make the judgments that are necessary as to when the public is going to accept a particular program or like a particular kind of advertising.

I have no objection to that.

Mr. MACDONALD. I am sorry, the time of the gentleman has expired.

Thank you very much, Mr. Dingell, for a very fine presentation.

Mr. DINGELL. Thank you, Mr. Chairman.

I thank my colleagues on the committee for the privilege of being here this morning. You have been very gracious.

Mr. MACDONALD. The next witness listed is Mr. Otto Preminger.

We welcome you here, Mr. Preminger. Your reputation certainly has preceded you and you are very welcome here this morning.

STATEMENT OF OTTO PREMINGER, NEW YORK, N.Y.

Mr. PREMINGER. I was very happy when I received a telephone call from an old friend, who strangely enough is a theater owner in Chicago, who asked me what my position on pay television was and asked me if I would be willing to come here and testify.

I told him "My position on pay television would probably not please you because I am 100 percent for pay television."

As a matter of fact, I cannot understand how in our society of free competition we have a system where three networks completely control what the people of the United States are permitted to see on the so-called free airways.

We always hear these propaganda phrases, free airways and free television. If the television were free then how could ABC afford to pay me for a film that I made 12 years ago called "The Man With the Golden Arm," for two showings only, $650,000 cash?

Where do they get this money? Are they really that concerned about those 30 percent of the American people who otherwise would not be able to have entertainment without those so-called free airways?

The highways of the country also are the property of the people and free. Suppose I would come in here and suggest to you that I with two other friends would start three networks of huge buses and in these buses we would put advertisements, the captive people in the bus would have to look at the ads that somebody said are better than the programs, and I think they are most of the time, and I would then ask you, however, to outlaw the automobile or private automobile because then all Americans could travel on these public highways for free and it would all be paid by advertising.

In my opinion as a citizen and as a producer of entertainment on the stage and in the films for the last 31 years since I came to this country, it is completely unbelievable that we should fall for this propaganda.

When I hear about this Hartford test, does anybody really believe that if the Lincoln Center had opened in Hartford, Conn., it would have been a success? Hartford cannot support any first-rate entertainment. It is ridiculous to speak about tests like this.

Why should not our free enterprise people, who want to risk their money, be able to compete with the three networks, and I must say all the chairmen of the three networks are friends of mine.

The networks have been doing very well for the last 20 years on these three things that they are giving away. Why should they not be able to compete and see if there is demand?

Also a sneaking suspicion I have that some more money could be made by free competition is proven by an announcement about 2 weeks ago when CBS announced that a very talented young man, whom I have known for many years, Mr. Goldmark has perfected a box which we will be able to buy and put on our television set, connect with our television set, and we will be able to have a whole library of home

entertainment which will not cost 25 cents or cost $750, but will have cartridges which would fit into this box and you could then play any film that you want to play on your television set instead of free entertainment.

Why is this not against the public interest? I think the public interest in a free country like ours is to select the entertainment. I think in a capitalistic country like ours it is only the box office that will really prove what people want to see and not those free things which I personally don't believe.

For instance, it is also very obvious that the quality of entertainment will immediately become a thousandfold better. I would like you gentlemen to consider the following:

If an advertiser pays for a show he pays with advertising dollars. In other words, he can only take a very small portion of the money that he has for this advertising because otherwise he has no money to produce the goods, he has no profits from cigarettes or whisky or automobiles.

But if, for instance, a young producer would say, "I would like to produce a terrific production of Shakespeare," he would get the greatest actors from all over the world to do Hamlet, this would not cost more than about $750,000. Let us say with time charges and so forth, a million dollars.

It would take only 4 million people to pay 25 cents to get this initial investment back and then you could play it over and over. Don't you believe that 4 million people in the United States, whatever the Hartford test says, would like to see a really great production of Hamlet?

If you today read the television columns you will see that any show that doesn't have at least 12 million viewers is being canceled. Why?

Because the advertiser cannot give away something to 4 million people. He needs to get 20, 30, 40 million people. Otherwise he has to throw out this show.

And you cannot find really high-class entertainment for that many people because they are different interests. There are people in the United States who want to see ballets. There will be more people if you show them ballets, if it is not restricted to New York, Chicago, and San Francisco.

There will be people who will want to see symphony orchestras and listen to them. If we are so concerned about the poor people—I think this is hyprocracy—if people are concerned why don't they give away food to hungry people instead of entertainment. It should come first.

Why don't the advertisers give away something to eat? Why do they give away those terrible shows?

And the networks have proven in 20 years of network programing that they cannot compete with old films that we made 20 years ago, 15 years ago. Our films are now, according to their own ratings, what makes people turn on television and what makes the advertisers pay.

Otherwise they could not. The network shows all followed. So, where is the proof that our culture has been improved during these 20 years through television? The opposite is true.

Furthermore, I believe that the people will pay. They will be happy to pay 25 cents for a show that otherwise, if they went to New York, would cost $10 or $12 a seat. And the whole family could see it on television.

I also believe that this is all propaganda, this word "free" that we always hear. What is free about television? You have to buy a television set. You have to maintain it. In most place you have to have an aerial.

Now it is very funny because I must speak from the other point of view, now the networks are going into the production of films and I think they should because the more competition there is, the better, particularly for the people who work. And I want to point out that there is no shortage of technicians.

On the contrary, most unions are closed although it is against the law, they closed because they want to protect their old members.

I was in Russia. I saw what happened there. We will soon be obsolete in comparison to other countries because all our craftsmen are getting old. Nobody speaks about it. If there is more competition the unions will open up, they will have new members and new young people.

You can come to any set, television set or movie set, and you will see there is no cameraman under 65 in the United States. That is true. In London, in Paris, in Russia, you see young people.

Now, when you speak about freedom and if I may give you this, several years ago I read a book after reading in the paper about the Shepherd murder case. The book was written by a Chicago journalist.

The book did not say that Mr. Shepherd, who in the meantime had been freed, was innocent but the book proved to me very conclusively, so that I was really moved by it, that he did not have a fair trial.

I went to the head of the network, Mr. Paley, an old friend of mine. We had lunch. I said, "I want at my own expense to produce a documentary, not a show, a 1-hour documentary according to this book."

I will not only not charge him anything, I will give him the whole thing free because I think it is important to show that it is possible in our society not to get a fair trial. It was after all the appeals had been exhausted at that time and he was very enthusiastic about it.

Then 2 or 3 days later he called me back and said, "We would rather pay you."

I offered it really for free, no advertising, nothing.

He said, "We must keep control over what is shown on the screen."

I said to him, "I will not make a film where people invest $10 million and give them the control."

Is this free television in the other sense of freedom? It is not true. It is all propaganda.

Speaking of censorship, there is a commercial censorship on television which is unbelievable. If I made a film today which would show a connection between smoking and cancer, I could show it in all theaters in the United States and the theaters would charge between $1.50 and $3, no network would play a film like this under any circumstances. They would use all kinds of excuses.

Otherwise if it is so free, why does the network employ hundreds of people in the so-called continuity acceptance department? The embarrassment is already clear, of course, something that is a complicated name instead of simply saying censorship.

I just made a film called "Hurry Sundown." The film was condemned by the Legion of Decency, by the Catholic Office, and that is their right. They have the right to tell their members not to go see my film.

In spite of it it was played in all theaters. As a matter of fact, a Catholic university in Omaha, Nebr., made this condemned film by the Catholic Legion of Decency for the opening of their film festival, in spite of it because they have autonomy and freedom.

Do you really believe that any network or any station would play a condemned film? I have a condemned film that could be shown to children now called "The Moon Is Blue" which I made 15 years ago. It is still condemned and no networks bought that film. They bought all my other film.

Why should not these people have the right in our society to compete for the public like in anything else, like in restaurants, like in any other kind of entertainment? Why should we regulate it at all except where there is obscenity? We have laws against obscenity.

This is just like in Russia. In Russia you cannot make a film for theaters, television or anything unless it is approved by the committee. When it is finished this committee says how many theaters should play it because they are afraid some film should not be seen by all the people.

But this is not our society. I think that the three networks are, and I think they all probably believe in it because they read all this propaganda all the time, that it is free, but they are the worst monopoly that I can imagine.

It is something that would be unthinkable.

I hear that people should only have the right to do pay television by wire, now the three networks the last 20 years have amassed a tremendous amount of money. Why don't they withdraw for 3 or 4 years—this would be a good test—or 1 year, much better than the Hartford test, and do their television on wire which they could certainly afford and give the free producers a chance to compete.

And besides, it is the same history that the movies had. Until 1950 when the Government decreed that the big movie companies are not permitted to also control the theaters, I could not have made independent pictures. I was under contract with 20th Century Fox.

There was one man, Mr. Zanuck, who told me what I can do and what I cannot do. When I had a fight with him he threw me out and we made up again. It was all on that basis, it was not free.

He did not say it was free. They invented this thing. This is a Madison Avenue invention, this freedom.

Today I can make any movie I want to if I find people who have confidence in me and finance me. Some movies I make make money and some lose money. This is the way it should be in my opinion.

That is about all I have generally to say. I was not prepared but I can talk here for hours because I think it is the worst, most incredible and oddest thing that the police must have bands. Therefore, they can have their bands.

Suppose they would interrupt the—I don't know what the things are called—the job for the defense or something like that and let the police give their message if they want to, nobody would lose much.

Mr. MACDONALD. Thank you very much Mr. Preminger, for a very interesting and informative and I must say entertaining recital of your feeling about the pending status of subscription TV.

One question entered my mind. When you got this $650,000 for "The Man With the Golden Arm" did you have to pay the—as I recall Frank Sinatra played in it.

Mr. PREMINGER. Yes; Frank Sinatra had 10 percent. Like I pay him on anything that comes in from the theaters, 10 percent. He gets 10 percent of that money.

Mr. MACDONALD. Did you have to pay residuals to all the actors and actresses?

Mr. PREMINGER. Sure; and it should be like this.

Mr. MACDONALD. I have a personal interest in this. How far back does it go?

Mr. PREMINGER. The picture was done 12 years ago. I cannot say, I don't remember now——

Mr. MACDONALD. How far back does the obligation to pay residuals go?

Mr. PREMINGER. That I really don't remember.

Mr. MACDONALD. You directed my wife in a couple of pictures. You perhaps know her better by the name of Phyllis Brooks. She has not been getting any residuals.

Mr. PREMINGER. I think we should look into it and whoever takes care of your wife's finances, Mr. Chairman, is probably remiss. It is not my fault. He should either call me or write to me if it is due to her. Or if I still refuse, sue me.

Mr. MACDONALD. I know you are a very hard man to sue.

Mr. PREMINGER. No; I am easy to sue. I usually lose my lawsuits.

Mr. MACDONALD. Actually with reference to the *Paramount* decision which divested the theater owners from production and vice versa you were talking about. Do you think that it is freedom to have an association such as the Motion Picture Association withhold their stamp of approval or say what can or cannot go into a picture?

Mr. PREMINGER. I have released two films, "The Man With the Golden Arm" and "The Moon Is Blue" without their approval and they gave me an approval later. This is a self-censoring administration. I personally do not think it is bad because the majority wants to do it. You can still have the freedom to release it against their wish. Both these pictures were big successes without the seal of approval. But I doubt very much if I had made or if anybody produced a show for ABC or CBS and they did not like it, you know, that I would have the freedom to then still insist on having it shown.

This is ruled by a committee, by executives who are not producers and who, therefore, go by rules. In Russia it is political. Here it is commercial censorship and also partly political because obviously the reason that Mr. Paley changed his mind about the documentary on the *Shepherd* case was that he was worried that perhaps the political powers in Ohio, or wherever it was, would not be happy if it were shown, that there were some political reasons for not granting the appeal to Mr. Shepherd.

Then a lawyer came and got it, Mr. Bailey.

Mr. MACDONALD. In conclusion, I would just like to point out that when you were talking about the three network monopoly, this committee passed and we are now in the process of going to conference with the Senate, who also passed a bill, provisions for a fourth network, so-called cultural and educational network. I think perhaps that will help ease the situation you have in mind.

Mr. PREMINGER. It probably will but anything that is under bureaucratic control has always proven in this country not to work.

I come from Austria, we had wonderful subsidized theaters.

The subsidized theater in the United States has never existed and should not exist. It is not necessary. The people are interested enough to pay for their entertainment and to determine themselves what they want, not to have it determined by any bureaucrats.

I think that the best test would be to permit people to invest their money and to have pay television. Who can lose except the people who invest their money? I am quite sure it would be most successful.

The networks would not go out of business. They would also have better programs.

Mr. MACDONALD. Mr. Preminger, could I ask this question?

What would be the safeguard against pay television having a monopoly because under the order that the Commission put out there is just going to be one station in a metropolitan center that has already in operation five stations.

There will just be one. I would guess there could only be one successful pay TV network. What would be the protection there against the very thing you say that the networks do?

Mr. PREMINGER. I don't know why there should be only one but this pay television——

Mr. MACDONALD. Just economics I would think.

Mr. PREMINGER. We live in this kind of society. For instance, I understand that the networks have threatened us that they will not play any old pictures because they will play them on pay television. Fine. If pay television would pay me frankly $700,000 for "The Man With the Golden Arm" I would sell it to them. I think it is my right. This is the system with which we live. I think it is a very good system.

There is freedom in this system I think. I think then ABC will pay more or less. That is what they are afraid of, competition, because between three people, although externally they fight each other and they have competition the competition is not very, very strong, you know.

I don't say, because I have no knowledge, that there are any secret deals but it is not as strong as if there were 20. Like the competition between seven big studios was it not as strong as it is now with hundreds of independent producers doing pictures.

Today a man who write a successful book gets much more money for the book because there are hundreds of people bidding for it, for the film rights, than he got when there were only seven or eight.

Mr. MACDONALD. Thank you.

Mr. Kornegay.

Mr. KORNEGAY. What did you say the name of that most recent production of yours was that was condemned?

Mr. PREMINGER. "Hurry Sundown."

Mr. KORNEGAY. Does that not sort of increase the popularity, such as having a book banned in Boston?

Mr. PREMINGER. No.

Mr. KORNEGAY. It does not?

Mr. PREMINGER. No. It upsets it. Maybe some more people go to see the movie because it is banned but also some people do not go. Otherwise, I don't think that the Catholic Legion of Decency would do it because they are very clever and very shrewd.

There are even some theaters, and it is legally questionable or somebody could sue them, who do not book movies like this because in Pennsylvania there is a bishop who does not only see that the movies are banned but if a theater plays one of the condemned movies, then the theater is out of bounds for Catholics for, I think 5 years. I think this would be a restraint if anybody wanted to sue the Catholic Church, it would be some kind of restraint of trade.

But I am a knight of the Holy Order of Saint Sepulchre and therefore I could not sue the Catholic Church. I really am. It is the highest order that the Catholic Church can give to a non-Catholic.

Mr. KORNEGAY. Let us move from religious condemnation of a production to the failure of the Moving Picture Association of America to approve it. If they were to not approve a particular production, would that not sort of create a lot of interest in it on the part of the public?

Mr. PREMINGER. No; not always, because there, too, you know, many people wouldn't see it. Many people don't take ads if it does not have the seal from the Moving Pictures Association.

It is true there are movies on 42d Street and movies made, really salacious movies. Nobody gets rich with these movies. The theaters are not crowded. Or magazines, when next to Life and Time and Newsweek you see on the stands girlie magazines, dirty magazines, nobody makes fortunes with these things. The people are not that dumb.

I think the people know what they want and what entertainment is. That is why I believe that pay television will work because they will have good things to show and new things and it would be a show window for new talent. It would give people an opportunity. In every way it would be great.

Mr. KORNEGAY. As I gather from what you say, No. 1, or the most important message you have for us today in advocating subscription television is that it would afford more competition for the networks, that there is insufficient competition at the present time.

Mr. PREMINGER. Yes, and more competition for talent. It would afford people to direct shows to special segments of the population because it would not be necessary to get that many people to see a certain show.

For instance, "The Ed Sullivan Show." I don't know if it is a very high rated show. It is probably seen by 30 million people every Sunday and it is a very good show. I also look at it sometimes. Personally, at the same time on pay television if for 25 or 50 cents I could see an opera, I would prefer it. But it would not hurt "The Ed Sullivan Show." I still think 30 million people would like to see it, or maybe now only 19 million, but 3 or 4 or 5 million people in this vast land would like to see something better or something more serious.

This kind of competition gives you the chance to really produce and get the money for your production back and not be supported by advertising money.

You see, this also somehow is a very undignified thing, that advertising money that dogfood pays for shows and lets you know it every 15 minutes. I really think, for instance, that in countries that want propaganda against us, if they took a film and would show it

like it is shown here, uninterrupted with dogfood where the people say that there is so much protein in dogfood, I don't think it is a very good advertising for our country. I think the people would feel that this is not the way to give away, for free, art or some artistic entertainment.

Mr. KORNEGAY. I take it you don't have a dog.

Mr. PREMINGER. No, but why I bring up the dog food is because I, personally, am hurt by the fact that when some people are hungry that they have not better taste than to advertise and to emphasize how healthy it is, with protein and only meat, and wonderful meat, and no horsemeat. Somehow, it is very tactless. You see, they can be.

You see, this is what I would censor. This is where I, if I had something to say and the FCC would say be more careful, don't do this, it can hurt many people; it can also hurt us outside the country. And maybe those 30 million people who get this free entertainment, who could not afford 25 cents, also could not afford dog food and don't like these ads.

I think there are terribly tactless things done in these commercials which are produced very well and I agree much better than many shows that you see on television. They also cost more. A minute of television commercial; I heard the other day; I don't want to quote a figure I am not sure of, but it cost about $25,000 or $30,000 to produce.

Mr. KORNEGAY. I see my time is about up, Mr. Preminger, but I wanted to ask you about one other thing we have not touched on so far.

That is your estimation of the fact that there is a very little competition between the three existing networks.

Mr. PREMINGER. Absolutely.

Mr. KORNEGAY. In other words, if you had, say, the "Man with the Golden Arm" that you said you sold to one of them——

Mr. PREMINGER. I think if I had chosen to show it to another network—I sold it to this network because this network was willing to promise me that they would not cut one frame or one line and it would not be interrupted more than seven times and that at every interruption there would be no more than two commercials shown. So, I got something out of it.

But I think I could have gotten the same price and not more and also not less from any other network because they buy the same things.

Mr. KORNEGAY. If a nationwide system of subscription television had been in existence at that time, you could have gotten more by showing it on pay TV or subscription TV?

Mr. PREMINGER. Yes. I would have taken less because I would have preferred that this film which was produced with no interruptions in mind, that didn't have seven acts or eight acts, it was supposed to be seen for 1 hour and 40 minutes without interruption, I would have gladly taken $100,000 less or even more less if it had been shown as originally produced, which is also something that should be considered.

Mr. KORNEGAY. I want to thank you very much for coming here. I have thoroughly enjoyed your presentation and found it very beneficial. Thank you, sir.

Mr. PREMINGER. Thank you.

Mr. MACDONALD. Mr. Harvey.

Mr. HARVEY. Mr. Preminger, I can remember when you were a film director.

Mr. PREMINGER. I still am a film director.

Mr. HARVEY. You are also film producer?

Mr. PREMINGER. Yes.

Mr. HARVEY. You have your own independent film company?

Mr. PREMINGER. Yes.

Mr. HARVEY. You produce films and you own films; is that correct?

Mr. PREMINGER. I direct them. I don't own them always alone. This film, the "Man With the Golden Arm," reverted to me after 7 years. The copyright is owned by me but for 7 years a company like United Artists in this case that financed it also had the right to distribution. This is where they made their money.

Mr. HARVEY. At the present time, you produce films and you do own some of them?

Mr. PREMINGER. Yes; when they come back. For instance, I produce films now for Paramount. They finance them. For a while, they have the exclusive right to distribute them.

Mr. HARVEY. For how long?

Mr. PREMINGER. For 7 years. Then they revert to me if they have made their money back. If they have not made their money back, they keep that right to distribute them until they get their money back.

Mr. HARVEY. Do you make any films at the present time that you own outright, yourself?

Mr. PREMINGER. No. I don't have that much money.

Mr. HARVEY. This is not a case where you would expect to sell films to subscription television, yourself?

Mr. PREMINGER. Yes.

Mr. HARVEY. Or is it a case where you expect to sell many films?

Mr. PREMINGER. I would say this: I think this selling of films to television is something that will pass. It is only necessary today because the networks are not capable of producing their own entertainment. I would rather produce shows for pay television, special shows, not to sell films. Even if I made less money, it would very much interest me to do a show for pay television which would not be on film or on commercial television.

Mr. HARVEY. You keep assuming you would make less money selling to subscription television, but I gather that this is not why the networks are opposed to subscription television. I gather they feel that subscription television will be able to pay more money for films. Is that not correct?

Mr. PREMINGER. Perhaps if they feel that, then they bring forward the most powerful argument for pay television; then it will be very successful.

Mr. HARVEY. You made a very persuasive argument for free enterprise a moment ago. Let us be frank about this. There is definitely a dollars-and-cents angle to this whole thing, is there not?

Mr. PREMINGER. It is possible that also films would bring more money on pay television. It is possible. I don't know. I hope so. I certainly would then choose to sell my film to pay television.

I am not charitable like the networks; I do not give anything away.

I do believe, besides, pay television would create opportunities and jobs for people who have nothing to sell to now.

Mr. HARVEY. One of the arguments made against subscription television is that there would be a siphoning of talent from commercial television—I will not call it free; I will call it commercial television—to subscription television.

Do you think there would be such a siphoning?

Mr. PREMINGER. There was a siphoning from the legitimate theater to movies and people also predicted the legitimate theater would die when the talkie movies came in. Then there was a siphoning from the movies to television. We all can exist. There is enough talent and it will bring forward new talent. I don't think that we should worry about it. I think this is also free enterprise, that you compete for talent. It is not siphoning; it is competing.

Mr. HARVEY. Don't you think that the talent would appear on the network or on the medium, let us say, of subscription television, whichever one would give it the most money?

Mr. PREMINGER. Probably. For instance, today Mr. Bob Hope is making films and he appears on commercial television, or Mr. Sinatra played the lead in my film; he is making a film now in New York and at the same time a special is appearing on one of the networks and at the same time he is doing a concert tour. He might also then appear on pay television. There should be no monopoly.

Mr. HARVEY. Let us take Bob Hope and Mr. Sinatra. Don't you think that if their prices were doubled on subscription television they would go to subscription television rather than to commercial television?

Mr. PREMINGER. No. Sinatra gets so much today that I don't think it can be doubled. He gets for some commercials—they bought him a house and an office and everything. There is no limit. That is the same thing.

Just like the advertiser told ABC. We want a certain film, "River Kwai." Henry Ford said, "For my new line, I want this film. It doesn't matter what the cost." They paid for one showing, I believe, $2 million. The same way if the picture is very popular with the public; pay television would pay for it. It never happened before.

Mr. HARVEY. Since I have only 5 minutes, under our committee rule, let me ask one further question so that I don't impose on the others' time.

One of the arguments made against subscription television is that at certain times there would be a preemption of time; in other words, that subscription television would be so popular that it would make, say, in the nighttime hours an effort to advertise on the free networks impossible.

Do you see that in the future?

Mr. PREMINGER. If that happens, that would be the greatest proof that the whole system of the so-called free television, and I call it commercial television like you, sir, was wrong; that television should not be an advertising medium but it should be a free medium where the public pays.

Mr. HARVEY. As I gather the gist of your testimony, you have such strong faith in subscription television that you feel it could very likely disrupt our present broadcasting system.

Mr. PREMINGER. No; I don't believe so. This is an extreme example of the use now. I don't believe so because the present three companies that dominate the present television are so rich and so strong. Also, they will become more inventive. They will compete with pay televi-

sion. It is also pay television. The advertisers will still want to have their shows.

Mr. HARVEY. Thank you. You are a good witness, Mr. Preminger.

Mr. PREMINGER. Thank you.

Mr. MACDONALD. Mr. Van Deerlin.

Mr. VAN DEERLIN. Mr. Preminger, in forecasting the fine shows that will be available on subscription TV, you have three or four times used the figure 25 cents. Once you raised it to 50 cents.

I noticed in a catalog of films that was shown me the other day for the subscription station at Hartford, the rockbottom evening price I saw was one dollar and a quarter for a film, and for some first-run films it was a dollar and a half. This was considerably less than it would cost here to take your family to see the picture in downtown Washington, I will concede.

But I think that clearly the reluctance that exists among elected officeholders in regard to subscription television stems from a fear that, first, it is going to raise the cost of living in the average home by anywhere from $12 to $20 a month and, second, that you are not going to see any more world's series or Rose Bowl games or heavyweight championship fights on free television. I think that this fear is going to have to be beaten down.

Mr. PREMINGER. First of all, why should not commercial television buy the World Series and compete with free television? They certainly have a lot of money, too. In Hartford there were 2,000 sets connected with pay television. If you permit 60 or 80 million sets to be connected, instead of $1.50 it will probably have to cost 10 cents or maybe 25 cents.

The average homes also spend money to go to the theaters. The theaters in the United States, the movie theaters, are doing tremendous business; better than ever, in spite of the opportunity for families to see movies on television.

As a matter of fact, the exhibitors at the beginning fought pay television; they fought free television; and they fought the showing. They wanted originally to boycott like in London. In London, England, the exhibitors boycotted the showing of movies on television. They said, "Any company that shows their old movies on television, we won't play their movies."

Eventually they gave in. This is free competition. Nobody can predict what happens in free competition, but that is the beauty of it, the excitement of it, that people don't know. The cost of living—these are propaganda things that are being spread—like, for instance, in California. I live in New York but I happened to be in California during the time when they voted pay television out of California. The networks and the exhibitors must have spent an incredible amount of money because you could hear on radio every minute, "If you don't vote it out, if pay television is permitted, you won't see Ed Sullivan any more; you won't hear Sinatra for free." That was all nonsense.

Mr. VAN DEERLIN. I thought that was a most unworthy campaign.

Mr. PREMINGER. And the courts also declared it unconstitutional. I think if there were enough interest in pay television that pay television could go to the Supreme Court, win the battle, that it must be permitted just like restaurants must be permitted, or cabarets.

Suppose they opened another hotel here and the Sheraton Park said, "If you open another hotel, we will be out of business."

Mr. VAN DEERLIN. The point I am trying to make, Mr. Preminger, is that, regardless of the justification for the position that you are enunciating, the people of California did, by a substantial majority, vote against pay TV.

Mr. PREMINGER. To use a popular word, they were "brainwashed."

Mr. MACDONALD. That was in Michigan.

Mr. VAN DEERLIN. These are the same brainwashed, as you call them, to whom we must offer our candidacies next year. I represent San Diego, which is a coastal community; there are some children in my district that were found by the Office of Economic Opportunity never to have been to the beach. Now, they do have, I think, some programing on television——

Mr. PREMINGER. Don't they have to buy their sets? Are the sets there being given away by the networks?

Mr. VAN DEERLIN. Somehow there are television sets in these homes. I am just saying that there is a political problem here that I think the industry and its protagonists are going to have to take cognizance of.

Mr. PREMINGER. I believe, however, for instance, in California, if the other side had had the money or had insisted on equal time or whatever right they have, they would not have voted pay television out, if somebody had told them the truth, that pay television does not mean that they will not have what they have now; they will have more than they have now because the competition will improve the programing on the commercial television.

You don't believe really that NBC and ABC, two of the biggest companies in the United States, will close down their shops because of pay television? They will become stronger. They will work harder.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. MACDONALD. Mr. Brotzman.

Mr. BROTZMAN. Thank you, Mr. Chairman.

I was sitting here, Mr. Preminger, thinking that if you ever got tired of what you are doing, you have a brilliant future in the political arena.

Mr. PREMINGER. I appear sometimes on television. I played the part on Batman for my children, Mr. Freeze.

Mr. BROTZMAN. Considering your fee for "The Man With the Golden Arm," I can certainly understand why you don't want to change to politics.

Mr. PREMINGER. I am old enough also, it will sound corny, to feel I want to do something which I really believe or say something which I really believe is in the public interest.

Because I am not in the political arena I can speak freely. I will not be very popular with my friends at NBC and CBS when they hear what I have said but I don't care. This is a luxury I can afford, myself. I feel it is also against all the things that this country stands for. It is a restriction in one field which just grew out of some misconception. It should never have happened.

It should always have been free. If it were free could we not even say to competitive pay television, "You must also serve one channel free"—would that not be better—that would really be free without the same programs, without advertising.

They would be shown, let us say, 6 months later. There would still be many people who would want to see them now like the people who

go to the main theaters and people who will go to the neighborhood theaters.

For people who cannot afford it on another channel, give it to them free. I am sure now if the networks want to give it the time pay television would be very happy to say, "Every 6 months we will turn over this taped program, this opera, this ballet, let NBC and CBS show it on prime time for really free without advertising."

Mr. BROTZMAN. I thank you for your answer to my question. I do have another question. There has been a rather intense competition between television and the motion picture industry. Would that be a fair statement?

Mr. PREMINGER. In the beginning the motion picture industry that always lacked leadership gave in. They thought they were ruined. Then slowly by the fact that the others could not do anything good, you know, and they started to buy old pictures, today movie companies are being bought up by big speculators because the old films are worth so much. It was originally competition.

Now the movie companies help the networks by giving them their films, by selling them their films, and the networks support the movie companies by buying their old films for fortunes.

That is also passing because they are already making the mistake that they now may produce bad pictures, play them quickly in theaters and hope to sell them. They forget that people are not dumb, that people will not turn on the television for the pictures even though they are free.

Mr. BROTZMAN. There has been a sort of marriage between the motion picture industry and television.

Mr. PREMINGER. Yes.

Mr. BROTZMAN. Would you say by virtue of the process you have been discussing, buying the old movies, et cetera, that the motion picture industry is about back economically to the point it was prior to the advent of television?

Mr. PREMINGER. Even better.

I don't know about the stock market but I am sure that motion pictures shares sell for more now and motion picture companies are considered by financial circles to be safer, more prosperous than ever before.

Mr. BROTZMAN. I don't quite know what the prices are going to be. I have heard figures too, as my colleagues from California said, of what you would have to pay to see a movie in your own home but I wondered what would this do.

Mr. PREMINGER. The answer is very simple. You play today a road show in New York. There is a film like Cleopatra. You charge $3.50 or $4 for a seat for 3, 4, or 6 months, sometimes a year, for "Sound of Music" 2 years. It sells out.

Then one day they stop it and sell it to 20 theaters in the same city for half the money and the people want to see it. Then it stops and they sell it to 400 theaters for one-third of the money and it still sells.

If the public wants to see something there are enough people who first buy it for higher money, like some people buy more expensive clothes and some people buy less expensive clothes.

That is the beauty of the free enterprise I am discussing. It won't hurt anybody. Eventually they will see it for 25 cents and it will be additional income. It will not hurt anybody.

It is only the greed and the fear that makes people fight these things because they are afraid they will be hurt. Like the movie industry fought television when it arrived and like now our president, Mr. Valenti, whom you probably know, arrived here, I read someplace, 2 days ago with their lawyer, Mr. Nizer, to protest to the Justice Department that the television people dare to finance and produce movies. Why should they not? They are American citizens. If they were foreigners they should be able to do it.

Both sides always try to find some legal reasons why the other should not be free to compete.

Mr. MACDONALD. I am sorry, Mr. Brotzman.

Mr. BROTZMAN. Surely. We have gobbled up 5 minutes here.

Mr. MACDONALD. A long five.

Mr. PREMINGER. I talk too much.

Mr. BROTZMAN. I want to say to you that we on the committee do appreciate the fact that you have taken the time to come down here. It is very helpful to hear people who don't have a particular axe to grind.

Thank you.

Mr. MACDONALD. Mr. Ottinger.

Mr. OTTINGER. Mr. Chairman, I want to compliment Mr. Preminger on what I consider the most splendid piece of testimony I have ever heard. It was put forward lucidly, clearly, dramatically. I think you made your points very well.

In support of your thesis there is one area that I don't think we have brought out, and that is the potential of pay TV for educational purposes. Today, for instance, I would like to take Italian lessons, but the time when the educational program station puts that on just does not happen to be convenient for my hours in Congress; so that I can't take advantage of the courses offered on today's TV.

With pay television, however, with a retrieval system, you could select any kind of lesson you wanted at the hour and it would be a tremendous——

Mr. PREMINGER. May I say that the interest in languages has gone up. I took a crash course to refresh my French when I left for France. Also my children speak better French than I and I wanted to keep up in it.

I learned that Berlitz by having these new courses which are very modern, they really brainwash you, they hammer it into you, and that would also be possible on pay television because they could then vary the times.

You see, I don't believe that the channels should be limited. I think that in our age of technology you could have more channels. I don't believe, however, that if, for instance, on the educational channel—you see, this is my quarrel with any not free enterprise, I don't think that they will have courses as effective as Berlitz has or as pay television would have. I think that they are limited by the system of bureaucracy.

Mr. OTTINGER. I certainly agree with you. I think the people will make a wise choice and that it should be the people who have the choice of what they are going to hear rather than the networks or public television network, at least as an alternative to these other possibilities.

I certainly endorse what you have had to say very wholeheartedly and appreciate that you have said it so well.

Mr. PREMINGER. Thank you very much.

May I say one more thing.

I am at the moment preparing a film about young people. I have made a lot of research about the drug situation. I haven't heard anything on free television where young people are warned in a sensible way about the dangers.

I do believe, however, that if there were pay television, that people, you know, scientists, the same people who write books now, would also be able to appear there and talk to the young people and I think this would be very important.

Mr. OTTINGER. Thank you very much, Mr. Preminger.

Mr. MACDONALD. Mr. Brown.

Mr. BROWN. Mr. Preminger, I would like to compliment you on what I think has been a most eloquent defense of the free enterprise system that we have heard in a long time. We don't get too much about that because most people who come down seem to want the Government to do something for them or against their competitors.

That may have something to do with the point of all this. However, I am sorry to say that like the U.S. Cavalry, I think you may have arrived just about 3 or 4 weeks too late because some of the Indians have already scalped the taxpayers to the tune of $20 million on this public broadcasting legislation which will really be free because we put up $20 million so that there could be some programing and construction of television stations which will elevate the cultural level of the community, free to the extent that the advertisers are not putting it up, the taxpayers are.

I have learned by the experience of my colleagues, I want to ask just you two questions——

Mr. PREMINGER. I will make it short.

Mr. BROWN. I would like to ask you if you feel there would be even with pay TV or subscription TV more and better programing on commercial television if we had, say, 10 networks rather than three?

Mr. PREMINGER. Yes, definitely.

Mr. BROWN. That is all?

Mr. PREMINGER. I have also learned to answer short.

Mr. BROWN. This is a little bit more fundamental question.

If we had pay TV wouldn't everybody wind up watching the Yankees rather than the Kansas City Athletics or watching Frank Sinatra rather than some new talent and eventually this thing would again get down to the centralized problem?

Mr. PREMINGER. I don't believe so.

This is really something that nobody can prove. Like nobody can predict any success of free enterprise. But I believe that the opposite will happen. I believe that it will be more diversified. I really believe it will raise the cultural level of the United States.

Mr. BROWN. You would not have advertising on pay TV?

Mr. PREMINGER. I am against advertising on pay TV or, if it is necessary, advertising at the beginning or the end, not in the middle of shows. But I don't think there should be advertisers.

Mr. BROWN. In other words, it should be strictly box office?

Mr. PREMINGER. Yes. They don't advertise in movie houses any more—they used to—and they exist very well.

Mr. BROWN. Thank you very much.

Mr. MACDONALD. Mr. Kornegay.

Mr. KORNEGAY. What is your feeling, Mr. Preminger, with reference to the FCC having any authority in the area of setting or determining the prices that the subscriber pays for TV?

Mr. PREMINGER. If there should be abuses I think it should be regulated, the prices. I think there again competition will not make it necessary. I don't think that the FCC should have any power to regulate the content of the programs.

Mr. KORNEGAY. Let me interrupt here.

As I understand it, under the system that the FCC now envisions under their fourth report and order there would be no competition in the subscription TV?

Mr. PREMINGER. That is wrong, too.

Mr. VAN DEERLIN. Will the gentleman yield?

Mr. KORNEGAY. Yes.

Mr. VAN DEERLIN. What we are talking about is pay TV that uses the public airwaves. There is a limit on those, you know.

Mr. PREMINGER. I don't think that there is much of a limit. This could easily be enlarged. I would be grateful for one channel on pay TV because there will still be competition between pay TV and commercial TV, but I think if there were two channels it would be better.

I think that technically there is no limit.

Mr. BROWN. Will the gentleman yield? I don't understand that in the FCC requirements. As I understand, the FCC have said they will allow them on pay TV if there are four "A" signals, including pay TV in the area.

Mr. MACDONALD. Five.

Mr. BROWN. The point is that if there were five then that would not preclude another TV channel, would it?

Mr. MACDONALD. Yes, it would. You would have to have 10.

Mr. KORNEGAY. You have to have 10 and where do you have 10?

Mr. BROWN. Is that clear in the statement?

Mr. MACDONALD. Yes.

Mr. PREMINGER. Even if it starts like this, if it works, if it is successful, wouldn't it be changed, like many laws are being changed, many rules, by necessity. If it just started then everything would be fine.

Mr. MACDONALD. Thank you very much Mr. Preminger.

I don't have to echo what I have said and what other members have said about the brilliance of your presentation and our gratefulness for your taking time to come here to be with us.

Mr. PREMINGER. Thank you.

Mr. MACDONALD. I apologize to the other witnesses who are to be heard but inasmuch as the next witness was to be Zenith and they conducted this experiment, I think in the very limited time we would have it is only fair that you have a reasonable amount of time.

Ordinarily, we would come back at 2 o'clock if we could get permission from the Speaker to do so but today there is a very important bill on the floor, important to everyone in the country, a postal bill, which obviously is important to all Congressmen.

There will be a number of rollcalls and amendments to the bill so we can't meet this afternoon. So we will meet tomorrow in this room at 10 a.m.

The hearing is adjourned for today.

(Whereupon, at 12:15 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Wednesday, October 11, 1967.)

SUBSCRIPTION TELEVISION

WEDNESDAY, OCTOBER 11, 1967

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND POWER,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. Torbert H. Macdonald (chairman of the subcommittee) presiding.

Mr. MACDONALD. The hearing will come to order.

The first witness of the morning is Mr. Joseph Wright, president of Zenith Corp.

I understand you have some other members of your company that you would like to accompany you.

STATEMENT OF JOSEPH S. WRIGHT, PRESIDENT, ZENITH RADIO CORP.; ACCOMPANIED BY PIETER E. VAN BEEK, PRESIDENT, TECO; KEIGLER E. FLAKE, GENERAL MANAGER, WHCT-TV, HARTFORD, CONN.; AND W. THEODORE PIERSON, COUNSEL

Mr. WRIGHT. Yes, sir, Mr. Chairman.

I have with me Mr. W. Theodore Pierson, of Pierson, Ball & Dowd. Mr. Pierson has represented us in this matter of subscription television before the FCC and generally for the past 15 years; Mr. Pieter van Beek, who is president of Teco, which is an affiliated organization and who has been assistant to the president on phonovision matters for Zenith for many years; and also Mr. Keigler Flake, general manager of channel 18 in Hartford, Conn., the station which has been operating the subscription television operation authorized by the FCC.

Now, these gentlemen are here and available. If there are any questions that I cannot answer or any questions that anyone from the committee would like to address to them, we are happy to have them available to give you any information that we can.

We deeply appreciate this opportunity, Mr. Chairman, to appear before this committee and tell you a little something about us and also to tell you about this project that we have been engaged in so long.

Mr. MACDONALD. Do you want them at the table with you?

Mr. WRIGHT. I don't think it will be necessary. We only have three chairs here. They are right here available. If there is any matter that we would like them to handle, we can certainly ask them to come forward.

Mr. MACDONALD. All right.

Mr. WRIGHT. Let me tell you a little something about Zenith by way of background.

86-399 O—67——16

There have been some pretty hard things said about us in connection with the matter of subscription television that has been so controversial over the years.

We started out 49 years ago with two young men who were making radios on a kitchen table back on the Edgewater Beach in Chicago. One of those men is still with us and a member of our board of directors.

We struggled along in this business before most people had even heard of the word "radio" or that there was such a gadget.

These two young men got out of the Navy and they had a license under the old regenerative patents of Maj. Howard Armstrong, who was the greater pioneer and inventor in our business. The company struggled through the years along with thousands of others who were in this business.

There are many names of companies that were famous at one time in this area that have fallen by the wayside. We have grown in this business in which we are engaged, which is primarily the manufacture of radio receivers, television receivers, and high fidelity instruments and consumer electronics and hearing aids. This is really the scope and extent of our business. We have tried to stick to the things that we knew how to do.

In the course of that, we have grown from a kitchen table operation to a company which, last year, did over $600 million in business. We have more than 20,000 employees. We have more than 50,000 stockholders. We are, we think, the largest company in the world in the manufacture of consumer electronics.

Now, in achieving that position, the only way we could do it was by developing products that we thought the public would want to buy in competition with the products of our competitors when they got on the retailer shelves.

The whole name of our game, the whole thrust of our business, is to develop products and merchandise that we think will meet the public's demands, that will be in the price categories, that will have the features, the styling, that will make it sell in competition not only with the dozen or more manufacturers that compete with us in the United States but with all the foreign goods that come along.

Now, we are highly interested in television. Actually, television is the heart of our business. When the new fall programs come on, when the world's series comes on, when the football games come on and the new programs and everyone is excited about them, our industry's sales curve goes up like this. When the summer dog days, the days of the reruns and so forth come along, our sales curve goes down like this. This has been the pattern of our industry from the time that I know anything about it.

Now, I tell you this so that you will understand that we have a billion dollar stake right now at Zenith in seeing television become a vital vigorous force and in seeing that it does render the maximum service to the public.

Any suggestion that we would want to do something here which would limit television to a few people who might pay vast sums of money to see it and we would have anything to do with a service which would cut down free television and dry it up would certainly mean that we would be throwing away and working against the main thrust of our business now.

Actually, our interest is the other way. Our interest is in doing everything we can to broaden this medium, to get more stations on, to get a greater variety of programing, locally and nationally, because it is only in this way that our business is really going to grow, if this medium renders a great service to the public.

Now, many years ago, we came to the conclusion that television was going to be an awful lot different than radio. Whereas in radio you could have a great dramatic show by a few people in sweat shirts standing around the microphone reading from a script, when you got to television this was going to be a very costly and difficult thing to finance. We did not believe at that time that the advertiser could afford to spend the kind of money that we felt was going to be necessary to program this thing.

Now we think of advertising support of radio as being something ingrained in this medium, that it was almost invented along with it. The truth of the matter is that this was an accident, this development of advertising in support of it.

In the early days of radio when we were starting, this was an amateur thing for the most part. There was no real broadcasting as we know it now. Great arguments went on among men in the industry then as to how radio could be supported. Would manufacturers own a radio station and use it to sell their own goods? Would the set manufacturers make a levy among themselves to pay for the broadcasting of the stations?

The use of this as an advertising support came about, the way I have heard the story, when one of the radio magazines, someone had printed 100,000 too many copies of them and they were stuck with them and they could not sell them. This was in the early days of the National Association of Broadcasters. As a matter of fact, Commander MacDonald of Zenith, who was president of Zenith and the man who really built the company, was the first president of NAB, and they got on the radio and asked people to send in for these magazines for a quarter and they sold them out. So far as I know, this was the first real use of radio as a means of selling a product.

But the technology had never been developed for practically working out a way that the public could share in the cost of bringing things that advertising could not support. So, we asked some of our cleverest research people whether there was a way that this could be done technically. We have been working on the thing in terms of research now for more than 30 years.

In the course of that, we have developed a whole variety of systems which make it technically possible to scramble a signal at the transmitter so that when it goes out over the air and is received on the TV set, both the sound and the picture are virtually unusable. They are hashed up so that if you look at them and listen to the sound, you do not get the intelligence from them.

And, at the same time, to be able economically and simply to reconstitute that picture at the subscriber's set in such a way that he does get usable picture and sound and in such a way that his doing that can be recorded so that he can pay for what he has seen.

Now, we started an experiment in the city of Chicago in 1951. We had 300 homes that were involved in this. The only programing that we

could get for it were movies. Now, these were movies that were unavailable to television at the time.

They were out of theater release but most of them were from a year to 2 years out of theater release. We put them on and charged a dollar per family for seeing them. I think this ran for 6 or 8 weeks. After all, we wanted to know is this the kind of thing that the public wants? Do they really want something better than is available on TV now? And are they willing to share in the cost of it? We had no doubt about that after that Chicago experiment.

So, 15 years ago, we asked the Federal Communications Commission to approve our going ahead and doing this on a commercial basis. I am sure that I do not need to recount the long story that has gone on since that time. After a very protracted controversy before the FCC, we were granted permission to go ahead in Hartford in 1962 on an experimental basis.

That Hartford operation has taught us a great deal about subscription television. As a result of our studies there, we made all of this information available to the FCC.

By the way, we have a very detailed report that we filed with the FCC which I would certainly like to leave with this committee so that you may have the benefit of a full disclosure of all of our information on these operating results.

Mr. MACDONALD. I think, Mr. Wright, without objection, it will be very valuable to have it inserted in the record at this point.

(The document referred to follows:)

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In the Matter of:

AMENDMENT OF PART 3 OF THE COMMISSION'S RULES AND REGULATIONS (RADIO BROADCAST SERVICES) TO PROVIDE FOR SUBSCRIPTION TELEVISION SERVICE

Docket No. 11279

JOINT COMMENTS OF ZENITH RADIO CORPORATION AND TECO, INC. IN SUPPORT OF PETITION FOR NATION-WIDE AUTHORIZATION OF SUBSCRIPTION TELEVISION

March 10, 1965

INDEX

Page

I. INTRODUCTION 1

II. HISTORY OF THIS PROCEEDING 2

III. ISSUES PRESENTED 4

A. Jurisdictional Issue 4

B. Public Interest Issues 4

Jurisdictional Consideration

IV. THE COMMISSION HAS THE AUTHORITY UNDER THE COMMUNICATIONS ACT OF 1934, AS AMENDED, TO AUTHORIZE SUBSCRIPTION TELEVISION AS A "BROADCAST" SERVICE 5

Public Interest Considerations

V. THE HARTFORD TRIAL HAS ESTABLISHED THAT SUBSCRIPTION TELEVISION WILL PROVIDE A BENEFICIAL SUPPLEMENT TO THE PROGRAM CHOICES NOW AVAILABLE TO THE PUBLIC ON CONVENTIONAL TELEVISION 10

A. Motion Picture Films 12

B. Sports Events 13

C. Special Entertainment Programs 15

D. Educational and Instructional Programs 16

E. Charges for Subscription Programs 18

VI. THE HARTFORD TRIAL HAS DEMONSTRATED THAT SUBSCRIPTION TELEVISION PATRONAGE IS NOT LIMITED TO HIGH-INCOME SUBSCRIBERS BUT PRIMARILY ATTRACTS MIDDLE-INCOME SUBSCRIBERS 20

Index Continued

Page

VII. THE HARTFORD TRIAL ESTABLISHES THAT SUBSCRIPTION TELEVISION WOULD RESULT IN AN INCREASE IN ECONOMIC AND PROGRAM RESOURCES WHICH WOULD FACILITATE SIGNIFICANT INCREASES IN THE NUMBER OF TELEVISION SERVICES AVAILABLE TO THE PUBLIC UNDER THE PRESENT SYSTEM 23

A. Business Projections Based on Hartford Trial Experience 25

B. Conclusions Which May Be Drawn From Business Projections 35

VIII. THE HARTFORD TRIAL DEMONSTRATES THAT SUBSCRIPTION TELEVISION WOULD NOT IMPAIR THE CAPACITY OF THE PRESENT SYSTEM TO CONTINUE TO PROVIDE ADVERTISING-FINANCED PROGRAMMING 36

A. Audience Siphoning Would Be *De Minimis* 36

B. Subscription Television Would Not Pre-empt Any Significant Amount of Time Now Utilized By Advertising Sponsors 38

C. The Type of Box-Office Programming Shown During the Hartford Trial Demonstrates That Subscription Television Will Not Siphon Talent and Existing Programs From Conventional Television 42

IX. THE HARTFORD TRIAL HAS DEMONSTRATED THAT SUBSCRIPTION TELEVISION WILL RECEIVE SUFFICIENT PATRONAGE FROM THE PUBLIC TO MAKE IT AN ECONOMICALLY VIABLE BUSINESS 48

X. MISCELLANEOUS ISSUES CLARIFIED BY THE HARTFORD TRIAL 50

A. The Modus Operandi of Subscription Television and Methods to be Employed 50

B. Technical Performance 52

C. The Role of the Participating Broadcast Station Licensee 54

D. The Hartford Trial Has Established That There Are No Inherent Monopolistic Features Arising From Subscription Operations 55

XI. SUMMARY OF PUBLIC INTEREST CONSIDERATIONS 58

Index Continued

Page

XII. SCOPE OF RELIEF REQUESTED 60

1. Whether Subscription Television Operations Should Be Limited To A Single Technical System Or Whether General Standards Should Be Provided Within Which A Number Of Systems Might Operate 60

2. Whether Subscription Operations In An Individual Community Should Be Confined To A Single Technical System 60

3. Whether Nation-wide Subscription Television Should Be Limited To Multi-Station Markets (Four or More Stations) or Whether It Should Be Permitted In All Markets, Including Single-Station Markets 61

4. Whether Subscription Television Should Be Confined to a Single Station in Any Individual Community or Whether More Than One Station Should Be Authorized to Carry Programs 61

5. Whether Stations Should Be Limited in the Amount of Time That They Can Devote to Subscription Programming 62

6. Whether Subscription Television Should Be Limited to Only UHF Stations 63

7. Whether Restrictions Should Be Placed Upon the Broadcast of Commercials During Subscription Programs 64

8. Whether Subscription Television Should Be Limited to Broadcasting Programs of a Box-Office Nature ... 64

XIII. DESCRIPTION OF SUBSCRIPTION RULE PROPOSED BY ZENITH AND TECO 65

Proposed Subscription Rule 66

CONCLUSIONS 69

EXHIBITS

1. List of 599 Subscription Programs Shown During First Two Years of Hartford Trial by Program Category and Audience Rating 73

2. Average Weekly Program Expenditures by Subscriber Income Level 83

3. Average Monthly Program Viewing in Dollar Amounts ... 84

4. Top 100 Markets for 1964 Rated by Number of Television Homes 85

5. Suggested Notice of Proposed Rule Making 87

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In the Matter of:

AMENDMENT OF PART 3 OF THE COMMISSION'S RULES AND REGULATIONS (RADIO BROADCAST SERVICES) TO PROVIDE FOR SUBSCRIPTION TELEVISION SERVICE

Docket No. 11279

JOINT COMMENTS OF ZENITH RADIO CORPORATION AND TECO, INC. IN SUPPORT OF PETITION FOR NATION-WIDE AUTHORIZATION OF SUBSCRIPTION TELEVISION

I. INTRODUCTION

Zenith Radio Corporation and Teco, Inc. are filing these comments in support of their petition, filed simultaneously herewith, requesting the Commission to adopt appropriate rules authorizing subscription television service on an extended nation-wide basis.

In authorizing subscription television trial operations in its First and Third Reports, the Commission provided that the above-entitled proceeding would remain pending on the issue of whether subscription television service should be authorized or extended on a continuing basis until additional data were available from the trial subscription operations so authorized. The Hartford subscription trial being con-

ducted by RKO General, Inc., and its subsidiary, RKO Phonevision Company, in which Zenith and Teco are participating, is now in its third year of operation under the three-year authorization granted for that trial and has now reached a stage where meaningful data are available for analysis.

In these comments, with the cooperation of RKO, we are making public [1] the empirical knowledge gained during the Hartford subscription trial. Emphasis has been placed upon those factors which have a relationship to the public interest considerations and issues upon which the Commission reserved final decision in its First and Third Reports on subscription television until more operational data and demonstrable facts were available from appropriate trial operations.

II. HISTORY OF THIS PROCEEDING

The present rule making proceedings had their genesis in a petition filed by Zenith on February 25, 1952, as revised by a joint petition filed by Zenith and Teco, Inc. on November 29, 1954. Prior to this, Zenith, pursuant to an FCC authorization, conducted a successful three-month subscription television test with 300 subscribers in Chicago during 1951.[2]

On February 10, 1955, the Commission issued a notice of proposed rule making (Docket 11279, FCC 55-165) to elicit data and comments on questions of fact, law and public interest raised by the Zenith-Teco petition and subsequent petitions of other proponents of subscription television. As a result, voluminous comments were submitted by members of the television industry, motion picture interests and others, and over 25,000 letters and comments were received by the Commission from various organizations and individuals.

On May 23, 1957, the Commission issued a notice of further proceedings (FCC 57-530) in which it concluded that it has the requisite statutory authority to authorize the use of broadcast frequencies for subscription operations if it should find that it would be in the public interest to do so. It announced, however, that in the absence of a suitable trial demonstration of subscription television, it was unable to determine whether or not an authorization of that kind of television

[1] Most of this information, of course, has been made available to the Commission from time to time during the course of the Hartford operation.

[2] Full details of the 1951 test have been previously filed with the Commission.

service would serve the public interest. It again formulated a series of questions to elicit appropriate conditions under which such trial demonstrations might be conducted and invited interested parties to comment. Again, numerous and extensive written comments were submitted.

On October 17, 1957, the Commission adopted its First Report (16 RR 1509) in which it announced that it would accept applications by television station licensees to conduct subscription television operations under certain prescribed conditions. On February 26, 1958, the Commission issued a Second Report (16 RR 1539) temporarily deferring trial authorizations to afford Congress additional time to consider the then-pending legislative proposals on the subject.

On March 23, 1959, the Commission issued its Third Report (16 RR 1540a) revising several conditions in the First Report. The Commission therein stated that it was prepared to give consideration to such applications for subscription television trials as might be submitted by broadcast licensees in conformity with the revised requirements.

On June 22, 1960, RKO Phonevision Company (then known as Hartford Phonevision Company) and RKO General, Inc., its parent company, pursuant to the terms of the Third Report, applied for authorization to conduct television subscription operations, using the Zenith Phonevision system, over UHF Television Station WHCT, Hartford, Connecticut.

Hearings were held before the Commission *en banc* from October 24 through October 28, 1960, and the Commission reached its final decision on February 23, 1961, in which it unanimously concluded that the grant of RKO's application would fulfill the objectives of the trial subscription television operations established in the First and Third Reports. *Application of Hartford Phonevision Co.*, 20 RR 754 (1961). Thereafter, the United States Court of Appeals for the District of Columbia Circuit affirmed the Commission authorization of the Hartford trial. *Connecticut Committee Against Pay TV* v. *FCC*, 301 F.2d 835 (1962), cert. denied, 371 U.S. 816 (1962).

Actual subscription trial operations by WHCT, Hartford, were commenced on June 29, 1962, with 188 subscribers, including 48 "test" subscribers and 12 "complimentary" subscribers—i.e., veterans hospitals, Newington Home for Crippled Children, local hospitals, etc.

In the first two years of operations, the number of subscriber homes steadily increased as indicated below:

Date	*No. of Subscribers*
End of 26th week	1,729
End of 52nd week	2,743
End of 78th week	3,622
End of 104th week	4,784

At the close of the second year of trial operations, RKO decided to limit the number of subscribers to 5,000 for the remaining third year of the trial authorized by the Commission because business prudence and fairness to the subscribers did not warrant further substantial expansion without some assurance that the Commission would authorize the trial beyond the third year.

Thus, after more than twelve years of Commission proceedings, field tests and trials of subscription television, the time has come to give subscription television the opportunity to go into the market place on a nation-wide basis.

III. ISSUES PRESENTED

The Commission, in its First and Third Reports, outlined the central issues concerning whether subscription television should be authorized on a nation-wide basis, upon which it was reserving decision pending the trials as follows:

A. *Jurisdictional Issue* [3]

Whether subscription television should be classified as broadcasting under Section 3(o) of the Communications Act or whether it should be given some other classification pending receipt of additional information which would be produced by subscription trials.

B. Public Interest Issues

1. Whether subscription television would provide a beneficial supplement to the program choices now available to the public.

2. Whether subscription television would result in an increase of resources which would facilitate significant increases

[3] The Commission has already concluded that it has the statutory authority to authorize subscription television operations if it finds such operations to be in the public interest.

in the number of services available to the public under the present system.

3. Whether it would seriously impair the capacity of the present system to continue to provide advertising-financed programming of the present or foreseeable quantity and quality, free of direct charge to the public, and the related question: Whether subscription television would have a siphoning effect causing program producers, sports promoters, talent, writers, directors and stations to migrate to a disastrous degree away from the present system to subscription television, which would in turn frustrate any possible effort to continue to provide free television service anywhere near the present quantity or quality.

4. The degree of acceptance and support which subscription television might be able to obtain from members of the public in a position to make a free choice.

5. Subsidiary issues which the Commission anticipated would be clarified as a result of trial operations authorized pursuant to the First and Third Reports were: (a) the modus operandi of subscription service; (b) methods to be employed; (c) the nature of the programs offered; (d) technical performance; (e) the role of the participating broadcast station licensee; and (f) possible monopolistic features of a subscription service.

We shall hereafter discuss in detail each of these issues in light of the empirical knowledge gained during the Hartford subscription trial operation.

Jurisdictional Consideration

IV. THE COMMISSION HAS THE AUTHORITY UNDER THE COMMUNICATIONS ACT OF 1934, AS AMENDED, TO AUTHORIZE SUBSCRIPTION TELEVISION AS A "BROADCAST" SERVICE.

It cannot now be doubted that the Commission has statutory authority to authorize subscription television. Both the Commission and the Court of Appeals have so held.

The Commission, "after a painstaking review of the briefs submitted in this proceeding and additional research by the Commission staff,"[4] first reached this conclusion in its 1957 notice of further proceedings (FCC 57-530). In its First Report the Commission unanimously[5] affirmed its prior holding. It discussed in detail the relevant

[4] First Report, para. 20.

[5] In the only dissent to the report as a whole, Commissioner Bartley *sub silentio* conceded that the Commission had the power to authorize subscription services, although apparently he would have held that such should be classified as non-broadcast. 16 RR at 1533, 1538. It should be noted that Commissioner Bartley concurred in the result of the Third Report. 16 RR 1540a.

sections of the Communications Act and pertinent legislative history, and stated that:

> "[I]t is not reasonable to infer Congressional intent to prohibit charges for the reception of programs transmitted by broadcast stations, from language which makes no express reference to the question, and which in our opinion could be so construed only on a strained interpretation. Such a construction of the statute seems to us especially unwarranted in view of the fact that in the several respects, mentioned above,[6] in which Congress decided to impose specific limitations on the broadly defined licensing powers of the Commission, it did so in express, explicit language." (para. 29.)

These sections of the First Report were "readopted and reaffirmed" in the Third Report (para. 7). In the subsequent appeal from the Commission's 1961 final decision authorizing the Hartford operation, the appellant Connecticut Committee Against Pay TV argued, *inter alia,* that "the Commission lacks statutory power to authorize a television broadcast system which requires the direct payment of fees from the public . . . ."[7] This contention was rejected by the Court in its affirmance of the Commission's decision. These decisions have since stood undisturbed by either the Supreme Court or Congress.

Thus, no useful purpose would be served by prolonging this discussion with detailed argument and citation, except to add that the Hartford trial has not disclosed any fact that would in any way alter these conclusions.

The only jurisdictional consideration remaining open, then, is whether subscription television should be classified as "broadcasting" or under some entirely new category In its First Report the Commission, while rejecting any contention that the definition of "broadcasting" contained in Section 3(o) of the Communications Act *per se* bars the authorization of subscription broadcasting (para. 28) and, conversely, observing that "there would appear to be little basis for classifying the proposed kind of service as a common carrier service within the meaning of Section 3(h)" (para. 43), reserved a decision upon its proper classification. We submit that the language of

---

[6] Communications Act, as amended, Sections 311, 313, 315, 317, 325, 326. See First Report, para. 25.

[7] *Connecticut Committee Against Pay TV* v. *FCC,* 301 F. 2d 835, 837 (D.C. Cir.), cert. denied, 371 U.S. 816 (1962).

the Act, in pertinent part and as a whole, the relevant legislative history and case law, plus the results of the Hartford trial, demonstrate that subscription television should be classified as a broadcast service within the definition of Section 3(o).

Section 3(o) defines broadcasting as "the dissemination of radio communications intended to be received by the public or by the intermediary of relay stations." It is clear from this statutory language that the "intent" of the "broadcast licensee" and the inherent nature of the signal he transmits are the criteria for the classification of the service he renders. And as the Commission itself has stated, "The *primary* touchstone of a broadcast service is the intent of the broadcaster to provide radio or television program service without discrimination to as many members of the public as can be interested in the particular program as distinguished from a point-to-point message service to specified individuals." [8]

The Commission has also declared that under this definition subscription services "should properly be classified as a type of broadcast service." [9] Subsequently, in its First Report (para. 28) the Commission stated that "the evident intention of any station transmitting subscription programs would be to make them available to all members of the public within range of the station." This has been confirmed by the Hartford trial.

Of course, it is not the stated intention of a broadcaster that is of the utmost importance, but the intent that can reasonably be inferred from all the external circumstances. Certainly, however, the number of actual or potential viewers is not crucial. For instance, certain multiple-address private telegraph messages might be received by more people than some broadcast programs, but this certainly does not place the private telegraph message in the category of broadcast, or the broadcast programs in the category of point-to-point. A color broadcast by a television station or a broadcast by a new UHF station in a VHF market or a broadcast by an "educational" television station are not classified as point-to-point, although disseminated with the knowledge that only a highly limited number of persons

[8] Comments of the Federal Communications Commission on H.R. 6431, a Bill to Amend the Communications Act with Respect to its Application in the case of Subscription Radio and Television, FCC 54-601, May 6, 1954. (Emphasis added.)

[9] *Ibid.*

possessing special equipment will receive the broadcast. And, as the Court of Appeals stated in *Functional Music, Inc.* v. *FCC*, 274 F.2d 543, 548 (D.C. Cir.), cert. denied, 361 U.S. 813 (1958):

> "Program specialization and/or control is not necessarily determinative of this requisite intent, and therefore dispositive of broadcasting status. . . . Broadcasting remains broadcasting even though a segment of those capable of receiving the broadcast signal are equipped to delete a portion of that signal,"

and vice versa.

If the "functional music" services involved in this last case are properly classifiable as "broadcasting" (as the Court of Appeals held), surely subscription services are broadcasts. The potential functional music audience is much smaller than that of subscription television. More importantly, functional music's audience is inherently limited in type to "restaurants, stores, schools and comparable institutions." *Id.* at 544. In contrast, in the Hartford trial no limit was placed upon the type or number of subscribers until the third year when RKO limited the number to 5,000 for the reasons previously explained. Otherwise, besides the geographic and atmospheric limitations on range of reception, the only considerations preventing an individual from participating in the subscription services were either his own economic dictates or his own free choice to abstain. Each one of these considerations is equally applicable to any other type of "broadcasting."

It is likewise true that the inherent nature of the signal transmitted by a subscription operation demonstrates that it is a "broadcast" service. This signal is practically identical with that of any other broadcast station, the only difference being the specialized signal and equipment necessary to scramble and unscramble the transmission. A similar signal and similar equipment were involved in the *Functional Music* case.

Since most television broadcast stations derive their revenue from advertising and not from subscription charges, the argument has been made that Congress did not intend to authorize subscription stations to be classified under "broadcasting." This argument finds no support either in the historical development of television or in the legislative history of the Communications Act. As the Commission recognized in its First Report:

> "When Congress debated the legislation which emerged as the Radio Act of 1927, the practice of 'free' broadcasting had become

established and was universally followed. This had not, however, resulted from any legislative requirement. It was the way radio broadcasting grew up. The Secretary of Commerce—the predecessor licensing authority—was not limited to issuing broadcast licenses only to licensees proposing free broadcasts. The practice of free broadcasting resulted from what at that stage was the voluntary choice of the industry." (para. 32.)

Furthermore, the Commission, in the *Muzak Corporation* case, 8 FCC 581, 582 (1941), and the Court of Appeals, in *Functional Music,* expressly decided that the procurement of station revenue by direct charges to the public is within the definition of broadcasting.

The only remaining consideration, then, is whether a subscription broadcaster can comply with all of the Communications Act requirements and Commission regulations and policies imposed upon other broadcasters. The answer is definitely yes.[10] The Hartford trial demonstrated that a broadcast licensee supplying subscription television programs will have no difficulty whatsoever in meeting all of his obligations if classified as a "broadcaster." Indeed, the Hartford station (WHCT) experienced no dissimilarities in complying with these obligations during its hours of operation as a standard television broadcast station and those of a subscription broadcaster.

We submit, therefore, that the broadcast licensee is clearly performing a broadcasting function, whether his signal carries a sponsored, sustaining or subscription program. The fact that in the course of performing this ultimate task he employs services that are not in and of themselves broadcasting does not deprive his telecast of its real broadcasting character. He now uses the services of national networks, regional networks, news services, film syndicates, telegraph companies, transportation companies, the U.S. Mail, and telephone companies to obtain entertainment and information that he intends to release to the public, but this does not deprive his final act of transmission of its basic character—broadcasting.

From the above, it is clear that subscription television is broadcasting within the statutory definition. Any other conclusion would do violence to history, the background of governmental regulation, and the logical and reasonable meaning to be given to the plain words of the statute. It should be noted, however, that even if the Commis-

[10] Allowing, of course, for the requisite subscription scrambling of transmitted signals.

86-399 O - 67 -17

sion should determine to place subscription television in a classification other than "broadcasting," this would not preclude the authorization of subscription television to licensed stations operating in the broadcast band. See First Report, para. 28; see also *Muzak Corporation,* 8 FCC 581 (1941).

Public Interest Considerations

V. THE HARTFORD TRIAL HAS ESTABLISHED THAT SUBSCRIPTION TELEVISION WILL PROVIDE A BENEFICIAL SUPPLEMENT TO THE PROGRAM CHOICES NOW AVAILABLE TO THE PUBLIC ON CONVENTIONAL TELEVISION.

During the first two years of the Hartford subscription trial, WHCT broadcast 599 different subscription features which were "box-office attractions"—i.e., programs which were not available on conventional television and for which the public would ordinarily pay an admission charge at a theater, concert hall or sports arena. Since most of these 599 programs, such as current motion pictures, were given multiple showings, the time devoted to subscription programming during the first two years was 3,139 hours for 1,776 separate showings of these features. During this same two-year period, WHCT broadcast 3,623 hours of regular commercial programming.

Attached hereto as Exhibit 1 is a tabulation showing the title of each of the 599 subscription features broadcast, by general program category, the number of showings and the number and percentage of subscribers viewing each such feature and showing. Table 1 on the opposite page is a summary of the detailed information set forth in Exhibit 1.

The cost-per-listener advertising economics of conventional television prevent many types of box-office programs from being telecast because their cost is beyond the reach of the sponsor or the broadcaster. Other box-office programs such as sports events are often kept off the air because the broadcaster and the advertiser cannot sustain the economic burden of making up for the loss of box-office attendance. Other events have become unavailable to the public over conventional television because neither the sponsor nor the telecaster is in a position to bid competitively against closed-circuit theater television operators who charge a fee to the public. Each of the 599 subscription programs broadcast during the first two years of the Hartford trial falls into one or another of the above categories of programs which are not available on conventional television.

TABLE 1

SUMMARY BY PROGRAM CATEGORIES OF ALL 599 FEATURES SHOWN DURING FIRST TWO YEARS (104 WEEKS) OF HARTFORD PHONEVISION OPERATION

No. of Features	PROGRAM CATEGORIES	Total Showings of Features: No. of Showings	Total Showings of Features: Proportion of Total	Total Showings of Features: Average No. Per Feature	Percentage of Subscribers Viewing: Average For All Showings	Percentage of Subscribers Viewing: Average Per Showing
	FEATURE FILMS					
1	First Run U. S. Films	2	0.1%	2.0	10.7%	5.3%
116	First Subsequent Run U. S. Films (Shown Several Weeks After First Theater Run)	516	29.1%	4.4	27.3%	6.1%
297	Older U. S. Films (Over 6 Months in Theater Release)	958	54.0%	3.2	18.0%	5.6%
414	Subtotal—All U. S. Films	1476	83.1%	3.6	20.7%	5.8%
18	Foreign Language Films (English Titles or Dialogue Dubbed In)	61	3.4%	3.4	10.1%	3.0%
432	Subtotal—All Films	1537	86.5%	3.6	20.1%	5.6%
	SPORTS					
6	Championship Boxing	6	0.3%	1.0	63.3%	63.3%
2	College Basketball	2	0.1%	1.0	13.6%	13.6%
1	High School Basketball	1	0.1%	1.0	10.7%	10.7%
21	Professional Basketball	21	1.2%	1.0	6.6%	6.6%
5	College Football	5	0.3%	1.0	6.2%	6.2%
44	Professional Hockey	44	2.5%	1.0	5.3%	5.3%
79	Subtotal—All Live Sports	79	4.5%	1.0	9.8%	9.8%
35	Special Entertainment Productions (Broadway and Off-Broadway Plays, Opera and Ballet, Concerts and Recitals, Variety, Nightclub and Cabaret)	97	5.5%	2.7	8.7%	3.1%
50	Educational Features	57	3.2%	1.1	0.8%	0.7%
3	Medical Programs limited to 100 Doctor-Subscribers	6	0.3%	2.0	18.7%	9.3%
599	GRAND TOTALS*	1776	100.0%	2.96	16.4%	5.5%

*This reflects a cumulative total of 4,998,033 separate and precisely measurable home exposures of 1776 separate showings.

A. Motion Picture Films

Feature films made up approximately 86% of the first two years of Hartford subscription programming, which is in accord with previous estimates submitted to the Commission by RKO Phonevision and Zenith that a dominant portion of the proposed subscription television programming would consist of current motion picture feature films. Of the various subscription television program categories, current motion pictures produced the highest cumulative average audience rating, with the single exception of heavyweight championship boxing. This, of course, is not surprising, since motion picture admission expenditures have in recent years constituted approximately two-thirds of the public's expenditures for spectator amusements, including legitimate theater, opera and spectator sports.[11]

It is relevant to note the cooperation which RKO received from motion picture producers and distributors during the Hartford trial. As the Commission knows, as soon as it authorized RKO to conduct the Hartford trial, various theater owner organizations attempted to induce motion picture producers and distributors to refrain from supplying their feature film product for the Hartford trial. Despite this theater opposition, all of the major[12] and a number of independent producers and distributors have supplied motion picture product for the Hartford trial. Except for one film, the producers and distributors have refused to supply film on a "first run" basis. However, they have supplied product on a "first subsequent run" basis, i.e., several weeks after first theater run, which corresponds to the time when pictures are released to neighborhood theaters. In our opinion, any nation-wide subscription system could, if it were deemed important, obtain "first run" pictures day-and-date with their showing in first run theaters, since a principal cause of the lack of availability of first-run and certain outstanding film features was the fact that the Hartford operation was on a trial basis. In the absence of any assurance that the Commission would extend subscription television

[11] Statistical Abstract of the United States, Table No. 283, p. 208 (1964).

[12] In March of 1964 RKO General instituted an antitrust suit against two of the major motion picture producers (20th Century-Fox and Universal Pictures) since neither company had been willing up to that time to provide any films for the Hartford trial. These suits were settled out of court in June of 1964; and as the second trial year ended, both companies were providing an excellent selection of older and "first subsequent run" films at prices comparable to those of the other major distributors who had been cooperating with the Hartford trial.

to a nation-wide basis, some film producers and distributors did not desire to release their best or newest product.

B. Sports Events

Championship Boxing. Six heavyweight championship fights, consisting of approximately 0.3% of the first two years of Hartford's subscription programming, were the most popular subscription programs presented. These fight programs had an average audience rating of approximately 63% of all subscribers.

Prior to the commencement of the subscription trial in Hartford, no heavyweight championship boxing matches had appeared on conventional television for over ten years. The promoters of such fights had found it much more profitable to distribute them to closed circuit theater outlets rather than to conventional television. Except in Hartford, where these six fights were available on subscription television, any other member of the public desiring to see these fights either had to attend them at the arena or view them on closed circuit theater television.

The economic benefits flowing to the public from the televising of these fights may be highlighted by the following example. The Liston-Clay championship fight held in Miami in February of 1964 was carried live by WHCT in Hartford. 3,637 subscribers (83% of all subscribers) tuned in this program at a per-program cost of $3.00. A survey conducted by RKO Phonevision revealed that there were an average of nine viewers per tuned-in-subscriber home. The 3,637 tuned-in-subscriber homes represented a total viewing audience of approximately 32,733. This same fight was available to the public via closed circuit television at several local Hartford theaters at a charge of $5.00 per person. Therefore, an average of nine subscription television viewers were able to watch this fight over WHCT at a total cost of $3.00, rather than a cost of $45.00 if they had attended the theater. In terms of total viewers, 32,733 persons were able to see this fight over WHCT at a total cost of $10,911, while, if this same number of persons had viewed the fight at the theaters (assuming the theaters had seats to accommodate them) it would have cost them $163,665. Thus, the Hartford public viewing this fight over WHCT accrued a net saving of $152,754 over what they would have been required to spend if they had seen it at the local Hartford theaters. This difference serves to emphasize the economic benefits which can flow to the public from the distribution of box-office events to homes via

over-the-air subscription, as contrasted to the more expensive closed-circuit theater outlet.

It is also noteworthy that 8,297 persons attended the Liston-Clay fight at the Miami Arena at admission prices scaled from $20.00 minimum to $250.00 ringside. The limited Hartford trial produced almost 4 times as many viewers for this fight than were present at the Miami arena.

College Sports. Five college football games and two college basketball games, making up approximately 0.4% of the first two years of Hartford subscription programming, were broadcast. It should be emphasized that under the restrictions placed upon the broadcast of college football games by the National Collegiate Athletic Association (NCAA), none of these games could have been broadcast by conventional television stations. The NCAA during the 1964 season gave the right to NBC to broadcast fourteen college games, including three Bowl games on January 1. The games were limited to national games on nine dates and four regional games on each of five dates.

The NCAA's restrictions which, in substance, limit the number of games available to the public in any part of the country to one game per week during the football season, were adopted to protect all college football teams from loss of gate receipts. Of necessity, these NCAA restrictions work some hardship on the public. For example, the public on the Atlantic seaboard may only have available to them the college game of the week selected by NCAA, which may be between two Pacific league teams, although the public in the East may have a vital interest in an important conference game between two Eastern teams. Or the public in the mid-West may be deprived of an important conference title game between two Big Ten teams because the game of the week, which is oftentimes selected before the season begins, is between a team from the Southwest conference and a team from the Pacific Coast conference. Since subscription television would protect the gate receipts, it would be possible for subscription television stations to carry local and regional games in which there is a strong local interest without being restricted to the so-called "game of the week" now permitted by NCAA. Similar rules have been adopted by the NCAA restricting the broadcast of college basketball games by conventional television.

Miscellaneous Sports. Twenty-one professional basketball games and forty-four professional hockey games were broadcast, making up 3.7% of the Hartford subscription programs carried during the first

two years. The professional basketball games had an average audience rating of 6.6%, and the professional hockey games an average audience rating of 5.3%. None of these games were available on conventional television.

As an experiment we also carried one high school basketball game which had an audience rating of 10.7%.

There are no major league professional baseball or football teams in Hartford. However, we believe that one of the major sports program supplements which subscription television could provide in other cities having major league professional baseball or football would be the broadcast of home games. Professional football home games are blacked out in both the American and National Football Leagues. The broadcasting of major league baseball home games are blacked out in many cities or their number restricted.

Several professional football teams, such as the Chicago Bears and the Detroit Lions, have entered into agreements permitting closed circuit theater operators to carry home games, since the seating capacities of the stadiums are generally sold out.[13] There are indications that the carrying of professional football home games by theater television will increase in the next few years. Subscription television, of course, can provide a much wider audience for home games than can the theaters. Thus, since these home games are already blacked out from conventional television, the public would receive a beneficial supplement if these programs could be carried by over-the-air subscription television as well as by theater television.

C. Special Entertainment Programs

During the first two years, 35 special entertainment programs, making up 5.5% of the total programming, were broadcast. These special entertainment programs had an average audience rating of 8.7%. They included the following:

Concerts	4
Opera and Ballet	4
Drama (Broadway, British, and Off-Broadway Plays)	11
Variety	7
Night Club and Cabaret	6

During the first year RKO experienced some difficulty in securing the cooperation of producers, writers and talent in connection with

[13] *Broadcasting*, Vol. 67, No. 6, August 10, 1964, p. 28.

obtaining special entertainment productions primarily because of their ignorance of the purpose of the Hartford trial. However, during the second year, RKO was able to obtain better cooperation because of the steadily increasing subscription audience, the greater knowledge concerning subscription television brought about by the subscription operation in Hartford, and the realization by producers and talent that the type of subscription television programs produced for the Hartford trial could be of great value in the future.

The economic limitations inherent in a single market test with a limited number of subscribers precluded a continuous supply of plays then showing on Broadway. The asking price, including the price of putting such shows on videotape, plus certain uneconomic demands of some local New York City unions, often made impractical the subscription broadcast of such shows beyond a limited number for test purposes. However, these economic problems, which flowed primarily from the limitations inherent in the trial, would be eliminated if there were a number of subscription stations bargaining from a broader economic base for such Broadway plays.

The special subscription entertainment programs carried during the Hartford trial were all of box-office nature; i.e., programs not otherwise available unless the viewer went to the theater, night club, concert hall, etc., and paid an admission charge.

D. Educational and Instructional Programs

Fifty educational and instructional features, approximately 3.2% of the first two years of the Hartford subscription programming, were broadcast. These educational and instructional programs had an average audience rating of 0.8%.

Although the educational institutions in the area fully cooperated with RKO, one of the principal problems was to find sufficient product of box-office caliber, since the limited operation did not justify the production of much original educational programming.

In our opinion, subscription television's major contribution to educational programming will be the fact that a subscription system, once installed in a community, may be utilized by noncommercial educational television stations as well as commercial television stations. The basic economic support for such a system in any community will undoubtedly come from the commercial stations and from programs of a non-educational category. However, once the system is installed, the educational stations will be able to use the subscription facilities for the purpose of obtaining support for their own programs. Thus, for

example, it will be possible for an educational station to give over-the-air class lessons for college credits by making per-program charges and limiting reception—as well as checking "class" attendance—of such programs to persons who pay the per-program charge.

We do not mean to imply that commercial television stations will not carry regular subscription programs of an educational or instructional type. However, it is likely that such programs will be in the form of very special in-depth programs produced at considerable cost, as contrasted to the much less expensive day-to-day type of classroom program often carried by educational stations.

Of particular significance has been the introduction of programming specially obtained for presentation to physicians in the Hartford area. By restricting the use of decoding information to any given group, the Zenith subscription television system makes it possible to broadcast programs of medical information to which only physicians can subscribe.

This type of programming was commenced in the early part of 1964 with a small number of physicians participating. Since that time, approximately 15 such programs, each shown three times, were broadcast. The entire project was supervised by a noted physician who is well known for his efforts in using the medium of television in connection with the study and practice of medicine.

Some of the programs in this series were specially produced in institutions such as the Mayo Clinic. As an auxiliary to this service, a particular program on the subject of "Smoking and Health" was produced which is scheduled to be presented, without charge, to all subscribers.

It is felt that subscription television, in this unique application, serves an important need. It allows physicians to learn of new advances in medicine in the privacy of their own homes or offices without inconvenience, loss of time, or significant cost. The above mentioned programs are offered to physicians at only a $1.50 charge each.

This medical project, as a part of the over-all subscription television operation in Hartford, has enjoyed considerable professional support from officials connected with such organizations as the Connecticut Academy of General Practice; the American Academy of General Practice; the Hampden District Medical Society, etc. Formal accreditation of credits to doctor-subscribers who participate in subscribing to this series of programs further attests to the importance of this endeavor.

Although this project is presently limited to the medical profession, it is conceivable that similar series could be organized for other professional groups. In doing so, subscription television can perform, as it already does in Hartford, a very valuable and unique public service.

Certainly, a nation-wide subscription system, although receiving its primary economic support from other types of programs, would offer a convenient and economical way of distributing educational programs on the college level, including adult education seminars directed to the various sciences and professions.

E. Charges for Subscription Programs

Set forth below are the highest and lowest per-program charges for each category of programming carried during the first two years of the Hartford trial.

Feature Films	$1.50	$ .50
Sports Events	$3.00	$1.00
Opera and Ballet	$2.00	$1.25
Educational and Instructive	$1.00	$ .25
Concerts and Recitals	$1.50	$1.00
Variety	$2.00	$1.50
Night Club and Cabaret	$1.50	$1.25
Drama	$2.00	$ .50
Medical Programs for Doctors Only	$1.50	$1.50

The average charge for each of these program categories during the second year of operation was

Feature Films	$1.03
Educational and Instructive	$ .71
Sports Events	$1.37
Opera and Ballet	$1.50
Concerts and Recitals	$1.50
Lectures	$ .71
Variety	$1.50
Night Club and Cabaret	$1.44
Drama	$1.62
Special Medical Programs	$1.50

The average over-all charge per hour for all categories of subscription program was 59 cents.

All subscribers, on the average, apportioned their program expenditures among program categories as follows:

First Run U. S. Films	.07%
First Subsequent Run U. S. Films (Shown Several Weeks After First Theater Run)	40.75%
Older U. S. Films (Over 6 months in Theater Release)	40.52%
Foreign Language Films (English Titles or Dialogue Dubbed In)	2.57%
Subtotal—All Films	83.91%
Championship Boxing	7.31%
College Basketball	.17%
High School Basketball	.03%
Professional Basketball	1.22%
College Football	.30%
Professional Hockey	2.34%
Subtotal—All Live Sports	11.37%
Special Entertainment Productions (Broadway and Off-Broadway Plays, Opera and Ballet, Concerts and Recitals, Variety, Nightclub and Cabaret)	4.60%
Educational Features	.09%
Medical Programs Limited to 100 Doctor-Subscribers	.03%
	100.00%

In the final analysis, subscription programs must supplement, rather than duplicate, the program choices now available to the public on conventional television. It is the box-office program, which the public would otherwise have to pay to see, which will induce the public to pay a subscription fee.

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.

A conventional television program has only one source of economic support—the advertising sponsor. The extent of the sponsor's

support is controlled by the cost-per-thousand economics of advertising. On the other hand, box-office attractions have several sources of economic support, including revenues derived from theater release as well as revenues derived from later use on conventional television. 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 theater box-office release are compatible while conventional television and theater box-office release are incompatible.

VI. THE HARTFORD TRIAL HAS DEMONSTRATED THAT SUBSCRIPTION TELEVISION PATRONAGE IS NOT LIMITED TO HIGH-INCOME SUBSCRIBERS BUT PRIMARILY ATTRACTS MIDDLE-INCOME SUBSCRIBERS

It has always been difficult to understand how the competitive sale of any product or service, including subscription television, could be limited only to high-income homes in a nation where the vast majority of people have substantial amounts of discretionary income to apportion where they please. In fact, the Hartford trial has demonstrated that not only will subscription attract all people possessing discretionary income, regardless of their income level, but it will be predominantly utilized by people earning between $4,000 and $9,999.

The actual subscriber response to the programming discussed in Point IV, supra, is tabulated on Exhibit 2. This detailed study of subscriber groupings among income levels and expenditure levels was initiated at the end of 92 weeks, when the operation had substantially attained its maximum planned size for purposes of the trial. Therefore, Exhibit 2 is limited to the 4633 current subscribers at the end of those 92 weeks and divides them into groups falling within each 10 cent bracket of average weekly expenditures. As could be expected, the ranges among income levels and program expenditures of these 4633 individual subscribers are as varied as their collective response to the 599 individual programs tabulated in Exhibit 1.

Analysis of this actual subscriber response demonstrates that subscription television is not the rich man's toy, as so often charged. The basis for this conclusion is demonstrated by the following tabu-

lar comparison of all U.S. families with these 4633 Hartford subscribers:

TABLE 2

Income Levels	4633 HARTFORD SUBSCRIBERS		
	Proportion of Total U.S. Families*	Proportion of Total Subscribers	Average Weekly Program Expenditure
0 – $3,999	29.1%	1.5%	$0.99
$4,000 – $6,999	32.5%	40.8%	1.25
$7,000 – $9,999	21.0%	43.3%	1.23
$10,000 and Over	17.7%	14.4%	1.18
Totals (rounded)	100.0%	100.0%	(avg.) $1.22

* Statistical Abstract of the United States, 1964, Table No. 457, p. 338.

As shown by the above table, 85.6% of the Hartford subscribers had incomes of less than $10,000 per year and 42.3% had annual incomes of less than $7,000. On the other hand, only 14.4% of the Hartford subscribers had incomes of $10,000 or more. Certainly, this Hartford concentration among middle-income groups in itself refutes the argument that subscription television is a "Cadillac" television service which only the wealthy can afford. This refutation is reinforced by the fact that the average program expenditures for all income levels above $4,000 are approximately the same.

2163 of these 4633 subscribers can be characterized as lower-than-average viewers, in that their weekly program expenditures all averaged less than the overall $1.22 per week. It is particularly significant that the remaining 2470 above-average viewers were even more concentrated in the middle-income levels. This is particularly noticeable in the $4,000-$6,999 level as shown by the following table:

TABLE 3

Annual Income Level	Average Program Expenditures Per Week		
	Under $1.21	$1.21 to $2.50	Over $2.50
0 – $3,999	1.9%	1.3%	0.5%
$4,000 – $6,999	37.2%	42.3%	52.1%
$7,000 – $9,999	43.8%	43.5%	39.5%
$10,000 and Over	17.0%	12.9%	8.0%
Totals (rounded)	100.0%	100.0%	100.0%
Total Subscribers	2163	2042	428

Although the middle-income groups constituted the great majority of subscribers at all 3 expenditure levels, the above Table 3 again reflects the slightly higher average expenditures of subscribers in the $4,000-$6,999 income level shown in the preceding Table 2.

Tables 2 and 3, which average the 92-week statistical period, do not indicate trends. However, the same 92-week analysis further established that, as the number of subscribers increased, by far the greatest penetration was at the $4,000-$6,999 income level. This trend is shown by the following table listing new subscribers added during appropriate time segments of the 92-week period:

TABLE 4

	Percentage of Subscribers			
Income Levels	First 26 Weeks	27th-52nd Weeks	53rd-78th Weeks	79th-92nd Weeks
0 – $3,999	1.1%	1.0%	2.1%	2.1%
$4,000 – $6,999	27.5%	35.5%	45.0%	54.6%
$7,000 – $9,999	49.9%	46.8%	40.6%	38.8%
$10,000 and Over	21.4%	16.7%	12.2%	4.5%
Totals (rounded)	100.0%	100.0%	100.0%	100.0%

The proportion of new subscribers in the $4,000-$7,000 income level steadily increased from 27.5% during the first 26 weeks to 54.6% during the last 14 weeks. On the other hand, the importance of the $7,000-$10,000 income group steadily declined from 49.9% during the first 26 weeks to 38.8% during the final 14 weeks of the period. The $10,000 and over income group showed the greatest decline, from 21.4% of the total subscribers in the first 26 weeks to 4.5% in the last 14 weeks.

The small percentages of subscribers with incomes of less than $4,000 a year in Tables 2, 3 and 4 are not surprising, since a $3,000 annual family budget has been described by President Johnson as the boundary below which any family must be considered to live in poverty and to which the nation's anti-poverty program is being directed. This so-called poverty segment of our population unfortunately does not provide a market for any goods and services beyond minimal shelter, food, clothing, and medical care. *Economic Report of the President,* transmitted to the Congress January 1964, pp. 58-59. A considerable portion of those in this poverty classifica-

tion may also represent that 8% of U. S. families who do not own television receivers.

The demonstrable facts established by the Hartford trial, as tabulated above, all strongly support Zenith's and Teco's earlier theoretical arguments that the economic benefits of subscription television are of equal or greater importance to the lower and middle income groups which can least afford the greater per-family cost of viewing box-office attractions outside the home. These demonstrated facts also effectively refute the argument that subscription television will appeal only to the 18% or less of American families who have incomes in excess of $10,000 a year. Instead, the Hartford trial has now established that subscription television appeals to families at all economic levels except the 20% which, by governmental definition, are poverty stricken. It follows that subscription television has reasonably demonstrated in Hartford its potential economic value for up to 80% of U. S. television homes.

VII. THE HARTFORD TRIAL ESTABLISHES THAT SUBSCRIPTION TELEVISION WOULD RESULT IN AN INCREASE IN ECONOMIC AND PROGRAM RESOURCES WHICH WOULD FACILITATE SIGNIFICANT INCREASES IN THE NUMBER OF TELEVISION SERVICES AVAILABLE TO THE PUBLIC UNDER THE PRESENT SYSTEM.

As a preliminary matter, it is appropriate to review the need for further expansion of the number of television services available to the public if the Commission's public interest objectives and priorities for a fully developed nation-wide television system are to be achieved. The essential elements of a national competitive television system are technical capacity, programs and revenue. The Commission has provided technical capacity by its television allocation plan. However, the Commission does not have the responsibility for supplying either programs or revenue to sustain such a plan. These essential elements of a successful national competitive television system must be provided by private enterprise. While the Commission has the duty of encouraging private enterprise to provide these essential elements, it does not have the power itself to supply them or to require others to supply them.

The Commission, as of January 1, 1964, has allocated 1,942 commercial UHF and VHF television channels and 346 educational UHF and VHF channels to 1,206 communities. As of January 1, 1964, there were 564 commercial television stations in operation in 271 markets (476 VHF and 88 UHF). As of this same date, there were 30 VHF

and 61 UHF construction permits in the hands of permittees. There were also 85 educational stations on the air and an additional 28 education construction permits outstanding.

In the period between the lifting of the freeze (1952) and January 1, 1964, 15 VHF and 108 UHF stations went off the air. In the same period, 71 VHF and 262 UHF construction permits were surrendered or cancelled. During 1963 alone, one VHF station and two UHF stations went dark.

The Commission's release of final television broadcast financial data for the year 1963 (the most recent available) reveals that 17% of the VHF stations (77 stations) and 42% of the UHF stations (33 stations) reported losses. As related to the Commission's priorities for the development of a nation-wide television system set forth in its Sixth Report and Order on Television Allocations,[14] approximately 45% of the present communities having television stations have only one station, approximately 25% are two-station markets, approximately 20% are three-station markets, and slightly less than 10% have four or more stations.

The Commission, as part of its program of fostering UHF development, has proposed a revised allocation plan for UHF channels which, among other things, has attempted to provide at least one commercial channel to any community with a population of 10,000 or more, with both UHF and VHF channels being utilized in reaching that goal. The Commission also sponsored the all-channel television receiver legislation, which will undoubtedly assist in the future development of UHF. However, the Commission recognized that this legislation was not the sole answer to the problem of UHF development.[15] Additional economic support and program sources must be developed.

The Commission has at this point done perhaps all that its regulatory power permits to encourage the development of UHF and to encourage the achievement of all goals established in its priorities for a nation-wide competitive television service except to promote more economic support and program product through the authoriza-

[14] Para 63, released April 14, 1952 (FCC 52-294).

[15] See Statement of Newton N. Minow, then Chairman of the Federal Communications Commission, in Hearings on H.R. 8031 and related bills, Before the Committee on Interstate and Foreign Commerce, House of Representatives, 87th Cong., 2d Sess., pp. 123, 151-194; see also Statement of Commissioner Robert E. Lee, *id.* at pp. 199-207.

tion of subscription television. It may be conceded that advertising-sponsored television is making available a valuable type of television service to a substantial portion of the American public. However, numerous compromises are still being made with television's full potential. Box-office type television entertainment is simply not available to the public. While the Commission has allocated sufficient channels to provide for a competitive television system, such competition is often limited under present circumstances. The public has no direct voice in selecting the programs which it may desire to see. Television's need for additional revenue and programs must also be viewed in the perspective of these relevant factors.

A. Business Projections Based on Hartford Trial Experience

Neither Zenith nor RKO anticipated that it would be possible in the limited three-year trial period to establish a profitable subscription operation in Hartford. Indeed, RKO estimated in the subscription hearing on its Hartford application that even under optimum trial operating conditions the Hartford trial would lose in excess of one million dollars during the three-year trial period, and RKO committed to spend from two million dollars to ten million dollars during the trial.[16] The Hartford trial, however, has accomplished what it was designed to do; namely, the gaining of empirical knowledge and the obtaining of significant and reliable data which would serve as a basis for appraising the potentials of subscription television in other types of circumstances. The experience so gained and the demonstrable facts so developed offer for the first time the parameters for reasonable business projections of the potentials of subscription television to provide additional economic and program resources which would facilitate significant increases in the number of television services available to the public.

Utilizing the facts established by actual Hartford operating experience, Zenith and Teco have prepared business projections for various size subscription systems. Four such projections are set forth in Tables 5 through 8 at the end of this section, covering subscription operations at the level of 20,000, 40,000, 75,000 and 100,000 subscribers, respectively.

Each of these pro forma profit and loss analyses projects the financial results which would occur at three different levels of annual

[16] *Application of Hartford Phonevision Co.*, 20 RR 754, 759 (1961).

86-399 O - 67 - 18

program expenditure per subscriber: annual program expenditure per subscriber at $65, $70, and $75. The $65 program expenditure figure approximates the average program expenditure per subscriber during the first two years of the Hartford trial.[17] In our opinion, the $70 and $75 annual per-subscriber program expenditure columns are equally realistic, since it is reasonable to assume that an expanded subscription system operating in a number of markets would have available a greater quantity and, in some respects, an improved quality of box-office attractions over that which it was possible to develop during the short period of the Hartford single-market subscription trial. Thus, it is assumed that first run and hard ticket feature films, more and better Broadway plays, etc. will become available.

While the assumptions which we have utilized in making these projections are based primarily on actual Hartford operating experience, we have made several revisions to reflect policy changes and operating improvements resulting from the experience gained during the test. We have also incorporated cost factors resulting from several recent technical improvements in decoder design developed as a result of experience gained in Hartford. The more significant of these revisions may be summarized as follows:

(1) For the purpose of generating a significant number of subscribers at the outset of the Hartford trial, RKO adopted a policy of offering the service free of the equipment rental fee during the first three months and certain summer vacation months. While this policy has been continued throughout the Hartford trial, it is the opinion of both RKO and Zenith that further continuation of this policy will serve no useful future business purpose if subscription television is extended on a nation-wide basis. This change of policy is reflected in the financial studies set forth in Table 5-8, inclusive.

(2) We have incorporated into our cost projections the assumption that subscription television programs will be broadcast in color and that the Phonevision subscription equipment will include all components necessary to encode and decode subscription programs in both color and black and white. The cost savings which will result from

[17] The $65 program expenditure figure has been adjusted to eliminate certain subscriber discounts allowed during Hartford Trial. Average annual program expenditure per subscriber during the first two years of the Hartford trial was $62.16. Exhibit 3 attached hereto sets forth the average dollar program expenditure by month for the first two years of the Hartford trial and also shows the total amount spent on programs for each month during this period.

other technical improvements are also reflected in our projections.[18]

The basis for the other estimates contained in these projections is as follows: All projections set forth in Tables 5-8, assume a going concern of 20,000, 40,000, 75,000 or 100,000 subscribers. The basis for the projected annual program expenditure per subscriber has been described above. In addition, it is assumed that each subscriber will pay an annual decoder rental fee of $39, which is the rental fee which subscribers are paying in Hartford.[19] Decoder installation charges are estimated at $10 per installation—the charge made during the Hartford trial.

The price which subscription television operators will pay to program producers and distributors for carrying their programs on subscription television is estimated to be 35% of the total subscriber program expenditures. This 35% figure is based upon the experience in Hartford. It also conforms to the percentage which motion picture producers and distributors, with a few exceptions, have traditionally charged motion picture theaters. It also represents a reasonable business allocation of total subscription income which will permit the television station and the subscription system operator to make a fair profit on the essential subscription functions which they will provide.

For the purpose of illustrating the economic viability of subscription television, we have assumed an expense for station time utilized for subscription programming of $300,000 a year for systems having 20,000 and 40,000 subscribers, and $400,000 a year for systems having 75,000 and 100,000 subscribers. Naturally, these station time charges will be subject to private negotiations and may vary upward or downward depending upon the profitability of the business. The particular time charges illustrated in the projections have been selected primarily because they represent an amount which, in most cases,

[18] A further discussion of the technical performance during the Hartford trial and information concerning technical improvements which Zenith has developed as a result of experience gained during the trial is set forth *infra* at section X of these comments.

[19] The Commission, in its Third Report and Order, supra, 16 RR 1540a, 1540b, required decoders to be rented rather than sold to the public during trial operations in order to protect the public from obsolescence in the event the trial was not extended beyond three years. We believe that if subscription television is authorized on a definitive nation-wide basis, practical business considerations will lead to the continuation of the practice of renting decoders rather than selling them to the public. On the other hand, we do not believe that any regulatory purpose is served by continuing this policy, and the Commission, therefore, might consider permitting subscription operators the flexibility of either selling or renting decoders to the public as business requirements may dictate.

would exceed the annual direct operating costs of a typical UHF station

Thus, assuming that a UHF station had no other source of income, such as from conventional advertising-sponsored programs, the time charges allocated to stations in our projections would cover the direct operating costs of such stations. This estimate receives support from the fact that the direct operating costs of WHCT in Hartford for the twelve months July 1963-June 1964 (except for certain conventional film library amortization which was atypical rather than representative) were $225,639. Further, an analysis of the UHF construction permits outstanding or pending before the Commission as of February 7, 1964, as listed in *Television Factbook,* 1964 Edition, page 858b, *et seq.,* discloses the following estimated operating expenses for UHF stations being submitted by applicants for various size markets:

Market Size	Number of UHF CP's	Average Operating Expense
100,000 or less	2	$146,500
100—200,000	3	115,000
200—300,000	3	186,000
300—400,000	1	140,000
400—500,000	7	254,000
500—600,000	4	404,000
600—700,000	3	207,000
700—800,000	1	410,000
800—900,000	3	431,000
900—1,000,000	4	380,000
1,000,000 and over	29	341,000

These estimates, which have been accepted by the Commission in determining UHF applicants' financial ability, indicate that UHF stations in markets up to 500,000 may operate at an annual expense of $300,000 or less and that in markets above 500,000 operating expenses of $400,000 are adequate.[20]

[20] The above estimates of operating costs set forth in UHF applications pending with the Commission must be further weighed in light of the method of projection which we have utilized herein. The estimates of operating expenses set forth in the UHF applications *include* the cost of obtaining program product. In our breakdown, we have allowed a cost equal to 35% of gross program revenue as the cost of program product, which would be *in addition* to the payment for station time. Thus, the time payments which we have allocated to stations represent an even more favorable spread than that reflected by simple comparison of the allocated time charges and the estimated operating expenses contained in UHF applications pending with the Commission.

We have assumed that any subscription system operator will pay a franchise or royalty fee of five percent of gross revenue to those providing this system and the necessary technical and other services in connection therewith. This amount is currently being paid by RKO in connection with the Hartford operation.

The basis for estimating technical expenses, including maintenance and repairs and installation and detachment costs, is predicated upon the following factors: Service calls are estimated at .89 per subscriber per year; decoder repair material has been estimated at $1.00 per year per subscriber; home service calls can be made at the rate of 10 per repairman per day; the service shop repair rate will average 12 decoders per man per day.[21]

Experience in Hartford, plus certain decoder improvements recently developed by Zenith which will greatly simplify future installation of decoders, indicate that decoders may be installed in subscribers' homes at the rate of 10 per man per day and may be detached at the rate of 16 per man per day.

As the number of subscribers increased in Hartford, a cost factor long experienced by telephone companies and similar businesses, which provide service and rent equipment on a mass basis to the public, became apparent; namely, that, in order to maintain any relatively static number of subscribers, allowance must be made for a detachment-attachment turnover. This turnover results from such factors as subscribers moving from the community (the average American family moves once every five years), discontinuing service during extended vacation periods, credit delinquencies and related economic reasons, such as loss of employment, insufficient use by customer to justify expense, etc. Based upon our experience in Hartford and anticipated changes in operating methods and practices we have allowed for an annual 20% attachment-detachment turnover in projecting our

---

[21] In most instances during the Hartford trial, repair of the Phonevision equipment was not performed on the premises of the subscribers; rather, the defective unit was removed, replaced and repaired in the decoder service shop; and the cost projections herein assume a continuation of this practice. On all service calls where the trouble was in the television receiver itself, as contrasted to the decoder, the subscriber was requested to contact his own TV serviceman for receiver repairs or adjustments.

During the Hartford trial, a contractual relationship was entered into with approximately 120 TV dealers and servicemen in the greater Hartford area and they were paid a commission for each installation generated by them.

costs for the four subscriber levels set forth in Tables 5 to 8, *infra*. We are also advised that this attachment-detachment turnover ratio is comparable to the 15-20% "disconnect-connect" annual turnover experienced by telephone companies in many markets.

In our cost projections we have estimated the cost of decoders at $125 per unit, plus $2 per unit for freight and $4.38 use tax, for a total of $131.38.

The equipment investment required for a subscription system, including decoders (1% spares), repair shop spare parts inventory, trucks, office furniture and fixtures, estimated for the four projected subscriber levels is as follows:

20,000 subscribers	$ 2,711,500
40,000 subscribers	$ 5,393,400
75,000 subscribers	$10,087,000
100,000 subscribers	$13,441,000

Depreciation has been computed on a five-year straight-line basis.[22]

[22] From 1942 to 1962 the Bureau of Internal Revenue, in Bulletin "F", suggested four years for depreciation of television station equipment. In its revised guidelines for depreciation adopted in 1962, it has suggested six years as the proper basis for depreciation of television station equipment. (Revised Procedure 62-21, 1962-2CB427.) Thus, a five-year rate for depreciation of new equipment, such as subscription television decoders, would appear appropriate not only from a business viewpoint but also from a tax depreciation viewpoint.

TABLE 5

BUSINESS PROJECTION OF SUBSCRIPTION TELEVISION OPERATION AT 20,000 SUBSCRIBER LEVEL & THREE PROGRAM INCOME LEVELS

	20,000 Subscribers		
	Prog. Inc. $65.00/Yr.	Prog. Inc. $70.00/Yr.	Prog. Inc. $75.00/Yr.
Income			
Gross program income	$ 1,300,000	$ 1,400,000	$ 1,500,000
Rental fees	780,000	780,000	780,000
Decoder Installation	40,000	40,000	40,000
Total	$ 2,120,000	$ 2,220,000	$ 2,320,000
Direct Costs			
Station Time	$ 300,000	$ 300,000	$ 300,000
Commissions	16,000	16,000	16,000
Program Product	455,000	490,000	525,000
Subscription Franchise Fee	104,000	109,000	114,000
ASCAP and BMI Fees	18,000	18,000	18,000
Lines and Facilities	32,400	32,400	32,400
Total	$ 925,400	$ 965,400	$ 1,005,400
Gross Profit	$ 1,194,600	$ 1,254,600	$ 1,314,600
Indirect Expense			
Sales	$ 147,000	$ 147,000	$ 147,000
Program	23,000	23,000	23,000
Technical	158,600	158,600	158,600
General and Admin.	864,900	865,900	866,900
Total	$ 1,193,500	$ 1,194,500	$ 1,195,500
Profit before Tax	$ 1,100	$ 60,100	$ 119,100
Profit after 48% tax	$ 600	$ 31,300	$ 61,900
Percent of income	.0%	1.4%	2.7%
Cost of Equipment	$ 2,711,500	$ 2,711,500	$ 2,711,500
Depreciation	541,900	541,900	541,900
Cash flow from profits and depreciation	542,500	573,200	603,800
Percent of equipment cost	20.0%	21.1%	22.3%

TABLE 6

BUSINESS PROJECTION OF SUBSCRIPTION TELEVISION OPERATION AT 40,000 SUBSCRIBER LEVEL & THREE PROGRAM INCOME LEVELS

	40,000 Subscribers		
	Prog. Inc. $65.00/Yr.	Prog. Inc. $70.00/Yr.	Prog. Inc. $75.00/Yr.
Income			
Gross program income	$ 2,600,000	$ 2,800,000	$ 3,000,000
Rental fees	1,560,000	1,560,000	1,560,000
Decoder Installation	80,000	80,000	80,000
Total	$ 4,240,000	$ 4,440,000	$ 4,640,000
Direct Costs			
Station Time	$ 300,000	$ 300,000	$ 300,000
Commissions	32,000	32,000	32,000
Program Product	910,000	980,000	1,050,000
Subscription Franchise Fee	208,000	218,000	228,000
ASCAP and BMI Fees	18,000	18,000	18,000
Lines and Facilities	32,400	32,400	32,400
Total	$ 1,500,400	$ 1,580,400	$ 1,660,400
Gross Profit	$ 2,739,600	$ 2,859,600	$ 2,979,600
Indirect Expense			
Sales	$ 284,000	$ 284,000	$ 284,000
Program	23,000	23,000	23,000
Technical	277,000	277,000	277,000
General and Admin.	1,536,800	1,538,800	1,540,800
Total	$ 2,120,800	$ 2,122,800	$ 2,124,800
Profit before tax	$ 618,800	$ 736,800	$ 854,800
Profit after 48% tax	$ 321,800	$ 383,100	$ 444,500
Percent of income	7.6%	8.6%	9.6%
Cost of Equipment	$ 5,393,400	$ 5,393,400	$ 5,393,400
Depreciation	1,078,900	1,078,900	1,078,900
Cash flow from profits and depreciation	$ 1,400,700	$ 1,462,000	$ 1,523,400
Percent of equipment cost	26.0%	27.1%	28.2%

TABLE 7

BUSINESS PROJECTION OF SUBSCRIPTION TELEVISION OPERATION AT 75,000 SUBSCRIBER LEVEL & THREE PROGRAM INCOME LEVELS

	75,000 Subscribers		
	Prog. Inc. $65.00/Yr.	Prog. Inc. $70.00/Yr.	Prog. Inc. $75.00/Yr.
Income			
Gross program income	$ 4,875,000	$ 5,250,000	$ 5,625,000
Rental fees	2,925,000	2,925,000	2,925,000
Decoder Installation	150,000	150,000	150,000
Total	$ 7,950,000	$ 8,325,000	$ 8,700,000
Direct Costs			
Station Time	$ 400,000	$ 400,000	$ 400,000
Commissions	60,000	60,000	60,000
Program Product	1,706,300	1,837,500	1,968,800
Subscription Franchise Fee	390,000	408,800	427,500
ASCAP and BMI Fees	18,000	18,000	18,000
Lines and Facilities	32,400	32,400	32,400
Total	$ 2,606,700	$ 2,756,700	$ 2,906,700
Gross Profit	$ 5,343,300	$ 5,568,300	$ 5,793,300
Indirect Expense			
Sales	$ 413,000	$ 413,000	$ 413,000
Program	23,000	23,000	23,000
Technical	428,000	428,000	428,000
General and Admin.	2,698,900	2,702,600	2,706,300
Total	$ 3,562,900	$ 3,566,600	$ 3,570,300
Profit before tax	$ 1,780,400	$ 2,001,700	$ 2,223,000
Profit after 48% tax	$ 925,800	$ 1,040,900	$ 1,156,000
Percent of income	11.6%	12.5%	13.3%
Cost of Equipment	$10,087,000	$10,087,000	$10,087,000
Depreciation	2,018,800	2,018,800	2,018,800
Cash flow from profits and depreciation	2,944,600	3,059,700	3,174,800
Percent of equipment cost	29.2%	30.3%	31.5%

TABLE 8

BUSINESS PROJECTION OF SUBSCRIPTION TELEVISION OPERATION AT 100,000 SUBSCRIBER LEVEL & THREE PROGRAM INCOME LEVELS

	100,000 Subscribers		
	Prog. Inc. $65.00/Yr.	Prog. Inc. $70.00/Yr.	Prog. Inc. $75.00/Yr.
Income			
Gross program income	$ 6,500,000	$ 7,000,000	$ 7,500,000
Rental fees	3,900,000	3,900,000	3,900,000
Decoder Installation	200,000	200,000	200,000
Total	$10,600,000	$11,100,000	$11,600,000
Direct Costs			
Station Time	$ 400,000	$ 400,000	$ 400,000
Commissions	80,000	80,000	80,000
Program Product	2,275,000	2,450,000	2,625,000
Subscription Franchise Fee	520,000	545,000	570,000
ASCAP and BMI Fees	18,000	18,000	18,000
Lines and Facilities	32,400	32,400	32,400
Total	$ 3,325,400	$ 3,525,400	$ 3,725,400
Gross Profit	$ 7,274,600	$ 7,574,600	$ 7,874,600
Indirect Expense			
Sales	$ 542,000	$ 542,000	$ 542,000
Program	23,000	23,000	23,000
Technical	591,000	591,000	591,000
General and Admin.	3,527,600	3,532,600	3,537,600
Total	$ 4,683,600	$ 4,688,600	$ 4,693,600
Profit before tax	$ 2,591,000	$ 2,886,000	$ 3,181,000
Profit after 48% tax	$ 1,347,300	$ 1,500,700	$ 1,654,100
Percent of income	12.7%	13.5%	14.3%
Cost of Equipment	$13,441,000	$13,441,000	$13,441,000
Depreciation	2,690,900	2,690,900	2,690,900
Cash flow from profits and depreciation	4,038,200	4,191,600	4,345,000
Percent of equipment cost	30.0%	31.2%	32.3%

B. Conclusions Which May Be Drawn From Business Projections

On the basis of the foregoing business projections a number of conclusions may be reached concerning subscription television's potential to increase the economic and program resources, thereby facilitating significant increases in the number of television services available to the public.

First, as indicated by Table 5, *supra,* a 20,000 subscriber system appears at this stage of the art to be the smallest subscription system which would be economically feasible. Taking the conservative estimate that subscription television could attain at least a 10% penetration of television homes, this would mean that subscription television would be economically viable in any market having 200,000 or more television homes.[23] Thus, at 10% penetration subscription television would be a prudent business venture in approximately the top 100 markets as ranked by Television Magazine in its "Telestatus" report as of March 1964.[24]

If penetration in excess of 10% is achieved, the profitability in markets at the 200,000 level would, of course, be increased from that shown in Table 5.[25] Further, if a penetration in excess of 10% is realized, operations in markets with less than 200,000 subscribers would become economically possible; e.g., a 20% penetration would permit an economically viable operation in the approximate top 170 markets having 100,000 or more television homes, and a 50% penetration would make a subscription operation feasible in the approximate top 200 markets having 40,000 or more television homes.

It is reasonable to anticipate that various markets with approximate ranking will, for various social, economic and geographic reasons, achieve different degrees of penetration. We submit, however, that a minimum 10% penetration, which is certainly weighted on the side

[23] Factors bearing on public acceptance are discussed at Sections VI and IX, of these comments.

[24] *Television Magazine,* Vol. XXI, No. 3, March 1964, p. 66. Under the "Telestatus" ranking, 91 of the top 100 markets have 200,000 or more television homes. The 92nd through 100th markets range between 194,500 and 171,600 television homes and would, therefore, require an 11% or 12% penetration to produce 20,000 subscribers. For convenience, the "Telestatus" ranking as of March 1964 is attached hereto as Exhibit 4.

[25] For example, if a 20% penetration was achieved in markets having 200,000 television homes, the profitability would be reflected by Table 6, *supra,* which projects a subscription operation at the 40,000 subscriber level.

of conservatism, serves to support a rational conclusion that subscription television could provide the support for additional television stations in approximately the top 100 markets or preserve the service of existing stations in such markets which have for a number of years been, and are now, suffering substantial financial losses. Subscription television thus has the reasonable potential of supporting 91 or more stations, in addition to the 454 stations which operated profitably in 1963. This would increase the present system by at least 20%. Such an increase would, indeed, make a valuable contribution to the development of a nation-wide competitive television system and to the achievement of the Commission's priorities.

Whether subscription television may make an even greater contribution than indicated by the above projections can, of course, only be determined in the market place. But in carrying out its duty and responsibility to develop and encourage new broadcast service to the public, the Commission's determination of what is in the public interest must also take into account and give appropriate weight to broad considerations of future welfare. Such an approach, of necessity, must be predicated upon future estimates as well as present facts, since it is keyed to future goals.[26]

VIII. THE HARTFORD TRIAL DEMONSTRATES THAT SUBSCRIPTION TELEVISION WOULD NOT IMPAIR THE CAPACITY OF THE PRESENT SYSTEM TO CONTINUE TO PROVIDE ADVERTISING-FINANCED PROGRAMMING.

In comments filed with the Commission in this proceeding prior to the Commission's Third Report and Order, *supra*, Zenith predicted that two factors would preclude subscription television from siphoning audience, television programs, and talent away from conventional television. These are the limited number of available box-office programs, and the budget limitations on the amount of time and money the public would spend on a recreational spectator activity such as subscription television. The existence and the precise scope of these parameters have been more definitively established during the Hartford trial.

A. Audience Siphoning Would Be De Minimis

During the first two years of the Hartford trial, the average subscriber purchased approximately 1 out of an average of 5.7 different program features available weekly, and the average viewing time per

[26] See *American Airlines Inc.* v. *Civil Aeronautics Board*, 192 F.2d 417 (D.C. Cir. 1951).

subscriber was approximately two hours per week. The average U. S. television home now views approximately 38 hours of television per week.[27] Therefore, it is obvious that 2 hours of subscription viewing will not satiate the public's appetite for the 38 hours of television programming which it now views.

Indeed, two hours of subscription viewing a week represents only slightly more than 5% of the 38 hours of programs the public now views on television. In terms of a nationwide audience, even this 5% loss of audience by conventional television could occur only in the unlikely circumstance that every U. S. television home was a subscription television subscriber—a 10% penetration by subscription television would result in maximum "siphoning" of only ½ of 1% of the audience available to conventional television.[28] This minimal ½ of 1% weekly "siphoning" would necessarily be decreased to whatever extent subscription viewing becomes additive rather than subtractive of the time now devoted to viewing conventional television programs. When one considers the fact that even during peak prime evening viewing hours between 35 and 50 percent [29] of television homes do not have sets in use, it is not unreasonable to assume that subscription viewing will have some additive effect by bringing back a portion of those set owners who often ignore conventional television programs.

The *de minimis* effect which subscription television would have upon conventional television program viewing may be further demonstrated by individual program ratings developed during the Hartford trial. Thus, the 599 different program features carried during the first two years of the Hartford trial involved 1,776 separate program broadcasts, because about 95% of the subscription programs were broadcast more than once. The average per-program-showing audience rating was 5.5%.[30] This means that an average of only 5.5% of all sub-

[27] Average viewing per television home per day for 1964 is estimated at 5 hours 25 minutes. *Broadcasting Magazine,* Vol. 67, No. 20, Nov. 16, 1964, p. 51.

[28] The average network program has a rating (Nielsen) of 19 which means it delivers approximately 10 million television homes. A siphoning effect of 0.5% nationally, therefore, would decrease the 10 million viewing homes by only 50,000.

[29] *Television Magazine,* Vol. XXI, No. 2, Feb. 1964, p. 43.

[30] The only marked departures from this average were represented by the phenomenally high audience rating achieved by championship boxing matches (63.3% rating), on the one hand, and the very low rating of educational and instructive programs (0.8% rating). See Table 1.

scriber homes were watching a particular subscription program at any given time during the entire first two years of the trial. This 5.5% average audience rating again demonstrates the inherent limitation upon the amount of subscription television viewing the public will support.

Projected on a national basis, even if we assume that an average of 5.5% of the viewing subscribers were "siphoned" from the commercial television audience at any given time, such "siphoning" would certainly have a minimal effect. It still would leave 94.5% of the television homes available to watch conventional advertising-sponsored programs. Here again, however, the "siphoning" factor would be limited solely to those television homes (a) which are subscribers, and (b) which would have watched conventional television had the subscription program not been available.

In the final analysis, as the Commission recognized in its decision authorizing the Hartford trial, the nature of subscription programs is such that the viewing thereof "is at least as likely to replace theater-going as conventional television viewing." [31] As further recognized by the Commission, "Since commercial programs would not be broadcast during subscription hours . . . we can reasonably assume that there would be no adverse effect on existing area stations through direct loss of advertising support." [32]

B. Subscription Television Would Not Pre-Empt Any Significant Amount of Time Now Utilized By Advertising Sponsors

During the first two years of the Hartford trial, 599 different program features were broadcast, embracing 1776 program showings and requiring 3,139 hours of subscription station time. Thus, WHCT devoted an average of 30 hours per week to subscription broadcasts. Some increases in the quantity of subscription programs and hours devoted to subscription broadcasting may be reasonably anticipated if the business is permitted to expand. We believe, however, that the Hartford experience is relatively typical of the amount of subscription programming and the time which will be devoted to subscription broadcasting which can be absorbed by any market, due to the limited number of box-office attractions and the size of the recreational budget.

---

[31] Conversely, if box office attractions are viewed at home rather than at the theatre, there is no net loss of audience available to conventional television.

[32] *Application of Hartford Phonevision Company,* 20 RR 754, 770-71 (1961).

We further believe that the Hartford trial establishes that such overall limitations would apply whether one or several television stations in the same market carry subscription programs. In short, several stations carrying subscription programming would have to divide the available box-office program product and share the public's subscription recreational budget in a manner which would result in little more subscription programming or time devoted to it than if only one station carried subscription programming.

In terms of the total number of broadcast hours available, it is quite clear that subscription television will not be in a position to pre-empt any substantial percentage of the total number of conventional broadcast hours now utilized by advertising sponsors for the purposes of bringing conventional programs to the public. For example, in Hartford, the total weekly hours of telecasting by the other stations serving that market is approximately 570 hours. Added to this are the hours of conventional television (30) broadcast by WHCT itself. Certainly, if subscription television used 30 to 40 hours a week for broadcasting its programs in the Hartford market, this would leave adequate time available to advertising sponsors. Further, a typical television station broadcasts from 115 to 120 hours of conventional programming a week. Thus, in multiple-station markets having three or more stations, subscription television at most could not absorb more than 10% to 15% of the total broadcast time available. In other words, the total number of broadcast hours available in the vast majority of television markets from all stations could not conceivably be filled with subscription programming, not only because of the shortage of box-office attractions but also because the public's recreational budget will not allow it to absorb sufficient programming time to deprive advertising-financed programming of its present broadcast time.

The Hartford trial also indicates the probability that television stations will be either dominantly subscription or dominantly conventional in their programming because of such factors as the demands on prime time by both types of programming, the necessity of conventional television stations to maintain network clearances, continuity of audience and, finally, because those stations now carrying conventional programming, particularly if they are network affiliates, may not find it advantageous or prudent to exchange their present substantial profits for the more speculative profits of subscription television.[33]

[33] Most network affiliates are VHF and profitable.

This latter consideration may be illustrated by considering the Washington, D. C. market. Washington is the tenth television market, with 934,000 television homes and has five commercial stations. The total broadcast revenues of these five stations for the year 1963 was $15,346,304, and their combined profits before taxes were $3,707,900.[34] It is certainly unlikely that these five stations, or at least the three network-affiliated stations, would abandon their multi-million dollar business in order to devote any significant portion of their operations to subscription television. Washington, with a 10% subscription penetration of television homes, would produce an approximate 100,000 member subscription system which, as reflected in the business projections set forth in Table 8 of Section VI, *supra,* would not produce the aggregate revenues or profits now enjoyed by the Washington stations. In the absence of any indication that advertisers will not still desire to use television to carry their advertising messages in the future, it is inconceivable that more than one of these stations would devote any substantial amount of its broadcast time to subscription television.

Because of the doubt that existing network affiliates would consider deserting conventional television broadcasting for subscription broadcasting in the foreseeable future and because of the strong probability that stations will either be dominantly subscription or dominantly conventional, it is most likely that subscription television will have to support the establishment of new television stations in the vast majority of markets in which it will operate if it ever expects to get off the ground. In light of the allocated channels available for new stations in most markets, the creation of such new stations will, of necessity, redound to the benefit of UHF development. Stations thus supported by subscription television certainly cannot be accused logically of siphoning time that would otherwise be available to conventional television. Rather, such new stations will add to the total amount of conventional programming now available to the public, since they will carry conventional programming as well as subscription programming.

The Limited Suppy of Box-Office Attractions. Throughout these comments reference has been made to numerical limitations of box-

[34] TV Broadcast Financial Data—1963, FCC Pub. Not.-B, No. 54732, July 23, 1964. At an average programming expenditure of $65 per subscriber—the Hartford average—a subscription system in Washington would have to achieve in excess of 25% penetration of Washington TV homes to produce the same dollar amount of subscription revenue as the broadcast revenues ($15,346,304) now obtained by 5 Washington stations.

office attractions as being one of the more important factors which must be considered in determining the possible effects that subscription television might have upon conventional television. It may be appropriate at this point to briefly review these numerical limitations. Current feature-length motion pictures will tend to be the dominant box-office attractions which subscription television will offer to the public. The total number of U. S. and foreign motion pictures released in the United States for the year 1963 was 420.

Other box-office attractions, such as Broadway plays, opera, heavyweight championship boxing matches, etc., are also relatively few in number. For example, over the past few years the number of Broadway and off-Broadway productions have ranged between 75 and 100 per year. The Metropolitan Opera produces between 20 and 25 different operas per year. There are perhaps no more than a dozen symphony orchestras and ballet companies which have sufficient national repute to be considered as box-office attractions, and the total seasonal repertoire offered by these companies is highly limited. Concerts and recitals by artists of national and international repute would probably not embrace more than 25 to 50 additional box-office attractions in related entertainment fields.

There were only 6 heavyweight championship boxing matches during the first two years of the Hartford trial. Subscription broadcasts of sporting events not available to conventional television, such as professional football home games, local and regional college football and basketball games, provide a source of program supply which would probably not exceed an additional 50 to 100 box-office attractions per year.

The foregoing establishes the known boundaries of box-office program supply. These box-office attractions represent the type of entertainment which is not now available on conventional television and for which the public pays by attending the theater, the concert hall and the sports arena. While subscription television itself may provide the economic support for a greater quantity of these types of box-office attractions, the limitations of the family recreational budget will serve to place very realistic limitations on the total supply of box-office attractions which will be available to subscription television or to any other medium. While the quantity of box-office attractions now generally available in this country is sufficient to support a subscription system and would offer a valuable supplement to the program choices now available to the public, it is readily apparent from the above that

86-399 O - 67 - 19

the number of such box-office attractions is sufficiently limited in supply that no significant percentage of the total number of conventional broadcast hours now available to the public could be absorbed by subscription television.

C. The Type of Box-Office Programming Shown During the Hartford Trial Demonstrates That Subscription Will Not Siphon Talent and Existing Programs From Conventional Television

The same 599 different box-office attractions shown during the Hartford trial could also have been shown nationwide. None of these programs were available on conventional television. Thus, current motion pictures shown in Hartford were not available to conventional television anywhere in the country. Prior to the six heavyweight championship boxing matches shown during the Hartford trial, such championship bouts had not been seen on conventional television for approximately 10 years. The college football games carried during the Hartford trial would not have been available for conventional television broadcasting under the restrictive college sports broadcasting policies adopted by the NCAA. Current Broadway plays are not shown on conventional television except on very rare occasions.[35] Two-hour concerts and recitals by internationally known artists have seldom, if ever, been shown on conventional television, since under the cost-per-thousand economics of advertising, sponsors are unwilling to sponsor this type of cultural program regularly on television.

Further, it is a well-known fact that stars, producers, directors, and writers often work in more than one medium even though one may pay more than the other. There is no reason to believe that subscription television would siphon talent from conventional television any more than there is reason to believe that the motion picture industry siphons talent from conventional television at the present time. Talent often works for both media. For example, top stars appearing in many of the motion pictures shown on subscription television in Hartford also appeared on conventional television during the period of the trial. Since subscription television merely substitutes the home television receiver for the motion picture theater for the release of feature-length motion pictures, there is no reason to believe that motion picture talent and writers would not still continue

[35] Thus, Westinghouse announced plans several years ago for carrying certain Broadway plays on conventional television. These plans apparently fell by the wayside. *Broadcasting*, Vol. 63, No. 8 Aug. 20, 1962, p. 73.

to work for conventional television as they now do. The same would be true of producers, talent, and writers working for other media such as the Broadway theater. The more talented generally refuse to give any one medium—the theater, motion pictures, and television—the exclusive right to their services. Indeed, it is not unusual to find talent appearing on conventional television programs during a period in which they are starring in a Broadway play and simultaneously therewith appearing in a motion picture in current release. The same applies with reference to producers and writers.

The charge is sometimes made that subscription television would siphon from conventional television those programs which now have high ratings and are available to the public without charge and convert them into subscription fare. This presumption that the public would pay for entertainment features of the caliber that it currently receives on television is clearly not borne out by the Hartford experience. Indeed, offered only box-office attractions during the Hartford trial, the subscribers viewed approximately one subscription program a week out of the average five offered to them weekly. Thus, the Hartford trial demonstrated that the public is selective even where the program fare is limited to box-office attractions, e.g., first subsequent run feature films had a cumulative audience rating of 27.3% compared to a rating of 18% for older films 6 months in theater release. Under this circumstance, it takes tortured reasoning to reach a conclusion that the public, with the alternative of purchasing box-office attractions on subscription, would apply their subscription recreational budget for the purpose of paying to see the type of program now seen on conventional television—particularly when programs of the conventional type could always be seen on some other station free, since such programs are within the cost-per-thousand economics of advertising sponsors.

Further, the average rating (Nielsen) for the programs of the three networks is 19. This means that on the average, 80% of the more than 50 million television homes refused to watch the average network conventional television program even though available without charge. The average Nielsen rating for the 40 top-rated network entertainment programs during the Fall season is 24.[36] Thus, even in the case of the 40 top-rated network programs, an average of 76% of the television viewing public refused to watch them even though they were offered free of charge. One may well imagine what would

[36] Nielsen Report for the two weeks ending November 22, 1964, *Broadcasting Magazine,* Vol. 67, No. 24, December 14, 1964, p. 27.

happen to the rating of these programs if anyone attempted to charge the public to see them.[37] No one can expect the public to pay for what someone else provides free.

Further, as the Commission recognized in authorizing the Hartford trial, "a charge for a commercial program or a program being seen elsewhere without charge might very well build in subscribers a resentment of serious financial consequence"[38] to the subscription operator. Certainly, the future operators of subscription television must be credited with some business acumen. It is pertinent in this regard that the operators of closed circuit theater television have never been naive enough to attempt to "siphon" away for their theater box-office any of the 40 top-rated network television programs. They have been content with box-office attractions not available on conventional television such as heavyweight championship fights, home games of professional football teams, etc.

The contention that subscription television could or would siphon all major sports events now seen on conventional television incorporates an economic fallacy which ignores the limitations of the public's recreational budget. For example, a nationwide subscription system operating in the top 175 television markets and achieving a 20% saturation of all U.S. television homes would have approximately ten million subscribers. If each such subscriber would spend an average of $65 per year on programs—the Hartford average—such expenditure would produce $650 million annually in subscription program revenue.

Based upon Hartford trial experience and the historical business patterns of program procurement costs in analogous fields, such as the motion picture industry, 35% of this amount—$227,500,000—would be available for nation-wide subscription program procurement. The remaining 65% would be required to support the maintenance and operation of the subscription technical systems and to pay for the time of subscription television stations.

---

[37] The presumption that current network programs would have a value as subscription programs also ignores the high mortality rate of these programs. Thus, the mortality rate for new prime time programs introduced in the 1963-1964 season was as follows: CBS-TV (82%), ABC-TV (50%) and NBC-TV (67%). *Sponsor*, Vol. 18, No. 22, June 1, 1964, p. 41.

[38] *Application of Hartford Phonevision Company*, 20 RR 754, 769 (1961).

The $227,500,000 thus available for subscription program procurement would be allocated among the various types of program product in a ratio corresponding to the quantity of each such type of program product utilized and the public's expenditures on each type of program. It is reasonable to estimate that the ratio of the public's expenditures on various types of subscription program product, such as motion picture films, legitimate theater, opera and sporting events, will show a close correlation to the ratio of expenditures now existing. Table 9 set forth below, therefore, allocates the $227,500,000 available for subscription program procurement among various types of program events in accordance with the average percentage of total public admission expenditures for the spectator events specified.

TABLE 9

	Average Percentage of Total Public Admission Expenditures to Specified Spectator Events*	Dollar Allocation of Subscription Revenues Available for Purchase Of Program Product
Motion Pictures	67%	$152,425,000
Legitimate Theaters and Opera and Entertainments Of Nonprofit Institutions (Except Athletics)	19%	$ 43,225,000
Spectator Sports	14%	$ 31,850,000
Total	100%	$227,500,000

* Averages for 5-year period 1958-1962 inclusive.
Statistical Abstract of the United States, 1964, No. 283, p. 208.

As is apparent from the above figures, by far the greatest percentage (86%) of the amount available for program procurement will be spent on entertainment other than sports. The fact that the public spends only 14% of its recreational dollar on spectator sports shows some correlation to the Hartford trial experience where (a) 13% of the box-office attractions during the first two years (79 out of 599) were live sports events, and (b) the subscribers allocated *11.4%* of their expenditures to these sports events.

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 sporting 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, including 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.

Nor do the amounts which the networks and local television stations now pay for sporting events represent the limit of their financial ability. Sporting events are now considered one of the best sponsorship buys available to advertisers.[39] Recent competition for sporting events between the three networks, which has resulted in bidding up the price of certain such events as professional football games tenfold, reflects the financial ability of the networks to acquire this type of sports programming and the ability of sponsors to pay for it.

For example, during the 1963 season, ninety national advertisers spent a total of more than $68 million for network time and programs covering 65 sports events and shows.[40] Thus, excluding the millions spent by local and regional sponsors of sporting events, these ninety national sponsors spent twice as much for these 65 sports events alone as subscription would have available for its entire sports budget under the above conditions.

To repeat, we believe that subscription television's major contribution to sports fans will be the making available of those events such as heavyweight championship boxing matches, home professional football and baseball games and the vast number of college football games which are now kept off conventional television by the owners thereof because of fear of the drastic effect conventional television may have upon box-office attendance. The public's recreational budget is simply not large enough to make it possible for subscription television to

---

[39] "TV Sports: How High the Boom?" *Television Magazine*, Vol XXI, No. 4, April 1964, p. 65 *et seq.*

[40] *Id.* at p. 74.

acquire sporting events at prices higher than conventional television can now pay, if we assume that the public will still desire to spend some part of its subscription recreational budget on such box-office attractions as current motion pictures, Broadway plays, operas, etc. Since the public for some years has been spending approximately 86% of its spectator event recreational dollar on current motion pictures, Broadway plays, operas, etc. and only 14% on spectator sports, it is reasonable to assume that sports will never dominate the program fare of subscription either in terms of quantity of product or in terms of revenue received.

The economic fallacy that subscription television could or would convert all present network conventional entertainment programs into subscription programs is even more pronounced. There are just too many programs of the conventional entertainment type available to permit economic absorption by the public's subscription recreational budget at a rate higher than sponsors will pay.

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 programming, 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.

The Commission is in no position to protect conventional television from these sources of competition which, in the long run, may be far more devastating in their competitive effect upon conventional television than would broadcast subscription television, which can be integrated into and made a part of our national television broadcast system, and operated under the public interest standard of the Communications Act. Certainly, it is an exaggeration of advocacy for

anyone to contend that advertising-supported conventional television, which currently represents an industry receiving approximately two billion dollars a year in revenue, will be in serious jeopardy if it is subjected to even minimal competition from subscription television. The converse is far more likely true, since subscription television will provide a new source of revenue which will supplement the advertising revenue now received by the broadcast industry.

IX. THE HARTFORD TRIAL HAS DEMONSTRATED THAT SUBSCRIPTION TELEVISION WILL RECEIVE SUFFICIENT PATRONAGE FROM THE PUBLIC TO MAKE IT AN ECONOMICALLY VIABLE BUSINESS.

The Hartford trial commenced on June 29, 1962 with 188 subscribers. By the close of the second year of the trial there were 4,784 subscribers, and the number of subscribers has hovered between there and 5,000 since that time because of the self-imposed test limitation of 5,000 subscribers. At the close of the second year RKO decided that it was not prudent business or fair to subscribers to increase the number of subscribers during the third year without any assurance that the trial would be extended beyond that time. RKO also concluded that a 5,000-subscriber sample was sufficiently representative, statistically, to provide meaningful information of the type that the test was designed to elicit.[41] Thus, no attempt was made during the Hartford trial to obtain the maximum number of subscribers possible. RKO's policy was one of planned growth and experimentation consistent with the best use of manpower and facilities.

As discussed more fully in Section V, *supra*, of these Comments, subscriber acceptance of subscription programs was widespread, as reflected by the average audience ratings for such box-office attractions as current motion pictures, championship prize fights, Broadway and Off-Broadway plays, etc., individually tabulated on Exhibit 1. The high and low range of such ratings by program categories is set forth on Table 10 on the opposite page. None of these 599 subscription features were shown on commercial television in Hartford or elsewhere, and their ratings were obtained in full and open competition with programs furnished without direct charge to Hartford viewers by affiliates of all three networks and by independent stations.

---

[41] The Hartford statistical sample for the first two years of the trial reflects a cumulative total of 4,998,033 separate and precisely measurable home exposures of 1776 separate program showings. The 5,000 subscriber-homes making up the sample are approximately 5 times the sample Nielsen uses for its National Television Index, H.R. Rep. No. 193, 87th Cong., 1st Sess., p. 127 (1961).

TABLE 10

RANGE OF VIEWING PERCENTAGES BY PROGRAM CATEGORIES OF ALL 599 FEATURES SHOWN DURING FIRST TWO YEARS (104 WEEKS) OF HARTFORD PHONEVISION OPERATION

No. of Features	Program Categories	No. of Showings	Cumulative Percent For All Showings: Highest For Any Feature	Cumulative Percent For All Showings: Lowest For Any Feature	Percent Viewing Any Separate Showing: Highest For Any Feature	Percent Viewing Any Separate Showing: Lowest For Any Feature
	FEATURE FILMS					
1	First Run U. S. Films	2	10.7%	10.7%	5.3%	5.3%
116	First Subsequent Run U. S. Films (Shown Several Weeks After First Theater Run)	516	81.1%	5.1%	16.2%	1.7%
297	Older U. S. Films (Over 6 Months in Theater Release)	958	71.2%	3.7%	19.8%	1.1%
18	Foreign Language Films (English Titles or Dialogue Dubbed In)	61	33.1%	1.6%	8.0%	0.5%
	SPORTS					
6	Championship Boxing	6	82.9%	27.1%	82.9%	27.1%
2	College Basketball	2	15.5%	11.6%	15.5%	11.6%
1	High School Basketball	1	10.7%	10.7%	10.7%	10.7%
21	Professional Basketball	21	10.9%	3.7%	10.9%	3.7%
5	College Football	5	12.7%	2.9%	12.7%	2.9%
44	Professional Hockey	44	8.3%	2.2%	8.3%	2.2%
35	Special Entertainment Productions (Broadway and Off-Broadway Plays, Opera and Ballet, Concerts and Recitals, Variety, Nightclub and Cabaret)	97	43.0%	0.9%	29.3%	0.8%
50	Educational Features	57	8.0%	0.1%	4.5%	0.1%
3	Medical Programs limited to 100 Doctor-Subscribers	6	32.0%	10.0%	16.0%	5.0%
599	GRAND TOTALS*	1776	82.9%	0.1%	82.9%	0.1%

* This reflects a cumulative total of 4,998,033 separate and precisely measurable home exposures of the 1776 separate program showings.

The high-low range in the ratings attracted by the 1776 showings of 599 subscription features, of course, varied no less widely than ratings attained by network affiliates and other commercial stations. More importantly, Hartford subscribers selectively viewed an average of approximately one such subscription showing per week and spent an average of $1.20 per week on the subscription showings selected. The average annual expenditure of subscribers, including program expenditures ($62.16) and decoder rental ($39.00),[42] was $101.16.

Subscribers in Hartford or elsewhere obviously would not regularly and willingly pay these average amounts over a 2-year period unless they found enough of these subscription programs to be sufficiently more attractive than alternative no-charge television programs. Since the same network programs—and substantially the same programming on independent commercial stations—were available throughout the U. S. during the same two-year period, there is no apparent reason to believe that the competitive ratings and revenues attracted by Hartford subscription programs would have been significantly different in other predominantly middle-income U.S. markets.

Thus, the public in Hartford, given a free choice, has viewed sufficient programs and spent sufficient money to demonstrate that subscription television in Hartford and other U. S. Television markets can be an economically viable competitive business to the extent previously shown in Section VI of these Comments.

X. MISCELLANEOUS ISSUES CLARIFIED BY THE HARTFORD TRIAL.

The Commission, in its First and Third Reports, anticipated that a number of subsidiary issues would be clarified as a result of trial operations, including the modus operandi of subscription service, methods to be employed, technical performance, the role of the participating broadcast station licensee, and possible monopolistic features of a subscription service. These subsidiary issues will be discussed hereafter.

A. The Modus Operandi of Subscription Television and Methods to be Employed.

From a commercial operating viewpoint, there are three functional organizations necessary to supply subscription television services. (1) A local franchise organization to scramble pictures for stations;

[42] The $39.00 annual decoder rental fee does not include an allowance for free rent allowed for the first 3 months of the trial and for certain vacations during trial period.

to provide for the installation, servicing and maintenance of subscriber decoders; to provide programming decoding information to the public; and to collect and disburse box-office revenue. (2) A television station licensee over whose facilities the subscription programs are transmitted. (3) Program sources which supply subscription programs directly to broadcasters.

During the Hartford trial, RKO General, Inc. performed the functions of a local franchise holder, and its subsidiary, RKO Phonevision Company, the licensee of WHCT, Hartford, performed the functions of a television station over whose facilities the subscription programs were transmitted. As the subscription franchise holder, RKO could have provided the same services as it provided to WHCT to other stations in Hartford if any had been authorized to carry subscription programs. As a matter of business convenience, RKO General, as franchise holder, paid its subsidiary, RKO Phonevision Company, at card time rates for the time devoted by WHCT to subscription programming. This, as shown below, is one of the various business methods which might be followed in allocating revenues between the subscription franchise holder and television stations.

Subscription programs were obtained from a wide variety of sources, including motion picture producers and distributors, sports promoters, producers of Broadway plays, etc. In short, RKO went out into the program market place and acquired box-office attractions by private negotiations with the various owners of such attractions. Subscription programs were obtained by WHCT in a manner comparable to the methods now followed by conventional television stations in obtaining program product from the networks, program syndicators, etc.

A nation-wide subscription system could be operated within the framework of the modus operandi followed in Hartford. The three basic subscription functions decribed have universal application. One possible qualification might be noted—in Hartford, RKO and its subsidiary, RKO Phonevision, served the dual role of franchise holder and television station licensee. While there is no apparent business or public interest policy reason why a television station should not participate in ownership of a franchise subscription system, there undoubtedly will be a number of markets where there will be little or no ownership relationship between the subscription television station and the franchise system. One apparent reason for this may be that the capital investment required for the operation of a subscription fran-

chise system is so substantial that it could not be met alone by many television stations. Thus, it is almost a certainty that sources of capital for the construction and operation of a subscription franchise system will have to be obtained from outside investors who may have no ownership interests in television licensees. We believe that it is unnecessary to speculate at this time on the precise make-up of subscription franchise system ownership as it may evolve in different markets. So long as any subscription franchise operator provides subscription service to all stations authorized by the Commission to carry subscription programs in a particular market, it would not appear to make any difference whether one or more of the television stations in a market had an ownership interest in the franchise operation or whether the franchise system was owned completely by non-broadcasters.

Other aspects of the modus operandi and methods to be employed have been explained throughout these comments.

B. Technical Performance.

The Hartford trial established that the Phonevision subscription system can meet all of the technical requirements established by the Commission in its Third Report; namely, (1) the Phonevision operation in Hartford did not cause interference either within or without the frequency employed to any greater extent than is permissible under the present rules and standards of the Commission; and (2) the Phonevision operation in Hartford did not cause perceptible degradation in the quality of the video or audio signals on any receivers during either a subscription program or a non-subscription program.

In addition, the Hartford trial established the following technical points: The Phonevision decoder may be installed on all makes and models of television receivers now in the hands of the public, where such receivers are otherwise in good operating condition.

Further, the Hartford trial established that the Phonevision system provides adequate protection against reception by non-subscribers. There have been no known instances of decoding of subscription television signals in Hartford by unauthorized persons or through the use of privately-built equipment not of Zenith Phonevision design.

During the Hartford trial, the Zenith Phonevision system at all times permitted an accurate allocation of the per-program charges to the individual programs viewed by subscribers as required by various program distributors. Thus, the monthly billing not only reflected the

total charges incurred by the subscriber, but broke down this total into the specific individual program components making up such total charges.

Contrary to speculative allegations advanced prior to the Hartford trial that entertainment must be sold to the public on a cash rather than on a credit basis, the Hartford trial established that a credit system is not only well received by the public but is also a sound business approach. The bad debts written off for the first two years were approximately 0.17% of total billing receipts, which is well within the bad debt ratio absorbed by many other types of businesses.[43] Further, periodic audits of the sealed magnetic billing tapes installed in subscribers' decoders revealed no attempts by subscribers to cheat with regard to billing.

The Hartford trial also established that the Phonevision equipment will function satisfactorily with a minimum of service calls. Upon the basis of recent improvements, it is estimated that home service calls will average .89 per subscriber per year. Many service calls did not involve defects in the subscription decoder. It was discovered that many defects were in the television receiver itself rather than in the decoder. In such cases the subscriber was required to contact his own TV serviceman for repairs or service. Other false service calls resulted from degradation of received UHF signal (inherent with UHF reception) because of weather, terrain, poor built-in antenna and the critical adjustments required for UHF-type tuners. Such service calls, of course, cannot be charged against subscription television equipment.

As a result of technical experience gained in the Hartford test, Zenith has re-evaluated the design of the subscriber instrument and has determined that a number of changes and simplifications should be introduced. Consequently, a new model decoder has been designed and developed and is now being production-engineered at Zenith. In comparison with the decoder presently employed in Hartford, the new instrument will differ in the following respects:

1. It can accommodate color as well as monochrome signals.
2. It can be connected to the antenna terminals of a receiver, instead of connected to inside wiring of the television set.

---

[43] Bad debt ratios of some other businesses: Communications (0.24%); Electric and Gas Utilities (0.19%). Table 2, Income Statements by Major Industrial Groups, p. 22, Statistics of Income, 1950-1957, Corporation Income Tax Returns, Internal Revenue Service.

3. The billing function of the new decoder is to be greatly simplified, to reduce cost and to facilitate operations on the part of the subscriber. It will remain, however, a credit-type system.

In addition, a number of circuitry changes are being made in an effort to reduce cost and further improve reliability.

C. The Role of the Participating Broadcast Station Licensee.

RKO, as the licensee of WHCT, had sole responsibility for operating that station during the Hartford trial. It had ultimate control over the selection of all subscription programs broadcast during the trial, the selection of the time such programs were broadcast and the selection of the charges to be made for the programs. We believe that these functions will always be the primary responsibility of the operating television station not only as a matter of regulatory policy governing licensee responsibility for programs, but also because practical business considerations dictate that the broadcast station maintain such ultimate control.

Based upon Hartford experience, it is reasonable to assume that the participating broadcast station, either separately or jointly with the franchise holder, will make arrangements with various program distributors, such as motion picture companies, producers of Broadway plays, sporting events, etc., for the procurement of programs of box-office quality. The broadcast station will share in the ultimate program receipts with the program producer and the subscription franchise holder upon a basis to be reached by private negotation. Such divisions of income may take various forms, such as a mutually agreed upon division of fixed percentages of gross among the franchise holder, the program distributor and the television station. In other cases, the franchise holder and the television station may join together in a cooperative effort to obtain subscription program product from program distributors, with the revenues over and above program costs to be divided between the franchise holder and the station on a mutually agreed basis. Finally, particularly at the outset of nationwide subscription operations where it may be necessary for a prospective franchise operator to induce parties to construct new television stations to broadcast subscription television programs, the franchise holder may agree to buy time from the television station at a so-called subscription card rate and the station will broadcast programs supplied by the franchise holder in a manner somewhat similar to the methods now followed by networks and their television station affiliates.

During the Hartford trial, it became apparent that, depending upon the particular circumstance, any one of the above methods of allocating program receipts among the television station, the program suppliers and the subscription franchise operator might be effectively used as a sound business basis for private negotiations. It is not unlikely, therefore, that all three of the above variations may be used in combination in the future.

D. The Hartford Trial Has Established That There Are No Inherent Monopolistic Features Arising From Subscription Operations.

The degree of competition between television stations in a given market in supplying subscription television service to the public will, of course, be under the regulatory control of the Commission. From a technical viewpoint, any Phonevision franchise system operating in a community may be used by either UHF or VHF stations and is completely compatible and can be used with the NTSC color system as well as black and white. The Phonevision system can serve more than one station. The subscriber will require only one Phonevision decoder to receive VHF, UHF, color or monochrome programs from one or more stations. Thus, any television broadcast licensee authorized by the Commission to carry subscription programs can be serviced by a franchise holder using Phonevision subscription equipment.

Zenith is not herein requesting that the Commission adopt technical standards for subscription television which would limit subscription operations, on a nation-wide basis, to the use of the Zenith Phonevision system. We believe that, under the policy of the Communications Act which encourages competition, the Commission should adopt general technical standards for subscription television, such as those adopted in its Third Report, and that any system which meets such general standards should be permitted to operate. If there is more than one system which can meet these standards, Zenith has no objection to taking its chances in free and open competition with other systems either nationwide or even in the same market. It is perhaps unlikely, as a practical matter, that there will be any inclination or desire on the part of more than one wireless subscription system to operate in the same market. However, there is a probability that wired and wireless systems might compete in in the same community.

There are, of course, already in existence many distributors and producers of program product of all kinds and types which may be

appropriately used by subscription television. Thus, the 599 different subscription programs shown during the first two years of the Hartford trial were obtained from over 50 different program producers and distributors of motion picture features, sports events, dramatic plays, etc. Because of the legal and business considerations involved, Zenith and Teco are effectively precluded from entering into any arrangement or tie-in with a local franchise holder giving any program supplier exclusive use of Phonevision facilities. Zenith itself, of course, does not contemplate that it will engage in the distribution or production of programs for release on subscription television.

During the Hartford trial, there was no centralized distribution control over the programs selected by RKO for subscription broadcast. RKO has been free to negotiate with any distributor of any kind of program which is of box-office quality. Contrary to the wild and speculative charges made in some 1955 comments filed in this proceeding and during the *Hartford Phonevision* case, *supra*, neither Zenith nor Teco, Inc.[44] has exercised any control over the distribution or selection of programs utilized during the Hartford trial. RKO assumed and maintained sole responsibility during the trial for selecting all subscription program material, including responsibility for choosing among program sources, rejecting programs, negotiating the terms of acquisition, and determining the number of program showings and the amount of program charges. Neither Teco nor Zenith had any responsibility in the foregoing respects, although both assisted in negotiating some of the arrangements with film distributors and other program suppliers when such assistance was requested by RKO.

Most programs broadcast during the Hartford trial (90%) were obtained from program suppliers upon a basis whereby RKO agreed to pay a fixed percentage of subscriber receipts from all viewers of the particular program. A small percentage of subscription programs, such as Broadway plays and special variety acts, required cash financing, which RKO requested Teco to provide from time to time and

[44] Teco, Inc. will serve a twofold function. First, it will be primarily responsible for the promotion of the use of Phonevision equipment in various communities and the granting of local franchises to interested and responsible parties. Second, Teco may assist in obtaining appropriate high-quality program product necessary for subscription operations. However, the program activities of Teco will not be tied in with its arrangement with the local franchise holder or the latter's arrangements with local broadcasting stations in any manner which would give Teco an exclusive position against any other owner or distributor of subscription television programs.

Teco generally accommodated such requests. No such financing, however, was committed by Teco unless and until RKO had previously requested acquisition and use of the particular program and had negotiated the terms of its acquisition. Each such program was generally acquired and paid for in the name of RKO, and Teco was in no way involved in determining the subscription fee to be charged by RKO or the time or times when such a program was to be broadcast by RKO. Thus, Teco's role in connection with these special programs was essentially limited (a) to reimbursing RKO for the cash acquisition costs that Teco had previously agreed to pay and (b) to receiving from RKO an agreed percentage of subscription fees ultimately collected from viewers thereof.

Zenith's role in obtaining programs was limited primarily to using the personal contacts of Zenith to facilitate RKO's negotiations with certain program suppliers with whom Zenith had long been in contact. Such assistance was furnished only on the request of RKO. Zenith also supplied limited financial assistance to Teco so that it could acquire additional programming of the type described above. Such program financial assistance as was extended by Zenith and Teco to RKO was for the primary purpose of extending the scope of the type of programming which could be offered to the public during the Hartford trial. Zenith does not contemplate that it will continue extending such financial assistance if subscription is operating in a number of markets on a continuing basis.

From the foregoing, it is clear that in the area of production and distribution of subscription television programs and in their release by broadcasting stations over local subscription television systems, there will be full, fair and free competition. The business relationships which will exist among program producers, subscription franchise holders and television stations will logically flow from the business circumstances under which it is anticipated subscription television will operate, pursuant to limitations imposed by existing law. We believe that the Hartford trial fairly represents the form and method of any subscription television system—Phonevision or otherwise.

In the final analysis, monopolistic conditions in any business generally result either from the intent of the interests engaged therein to establish such conditions or from the fact that the natural economic forces affecting the business tend inevitably towards monopoly. Zenith and Teco have no intent to acquire monopolistic control over the subscription television broadcast business in the United States. Nor

86-399 O - 67 - 20

can any broadcast station owner obtain such a monopoly under the multiple ownership policies of the Commission already in effect. While it is difficult to forecast all of the natural economic forces which might tend to mold the business forms of subscription television, it is impossible for us to conceive, under the operating proposals discussed herein, any immediate or reasonable prospect of monopolistic evils which would require governmental regulatory action. If, after the full play of the natural forces of competition, a condition now unforeseen should arise at some time in the future which would indicate any trend towards monopoly detrimental to the public, the Commission can always exert its present regulatory power to eliminate any antitrust problems that may possibly arise.

XI. SUMMARY OF PUBLIC INTEREST CONSIDERATIONS.

As a result of the Hartford trial, the Commission now has before it significant and reliable data which serve as a basis for appraising the potentials of subscription television in other types of circumstances. The reasonable projections of subscription television's potential, as set forth herein, based upon the facts adduced during the Hartford trial support a rational premise that subscription television has the potential of making substantial contributions to our national television system.

At the same time, the empirical knowledge gained during the Hartford trial serves to refute many of the wild speculations advanced by uninformed and biased opponents of subscription television during the previous stages of this proceeding—e.g., that it is technically impossible, that the public will have no interest in it, that program charges will be exorbitant, that subscription programs will not differ from conventional television programming, that it will siphon away present conventional programs which are now available to the public without charge, that it will destroy free television and that, at best, it will be little more than a plaything for the very wealthy. Thus, the only remaining problems involving subscription television are primarily business and marketing problems, as contrasted to regulatory public interest problems. In the last analysis, our proposal is simply to let the public itself evaluate subscription television in the market place.

When the Commission acts under the statutory mandate to encourage new service, the new service contemplated by its regulatory action is not to be frustrated by the fact that no one can prove beyond the peradventure of a doubt exactly how far the new and untried

service will develop. Thus, the Commission has the statutory obligation to authorize subscription television if it determines, upon the basis of the rational premises supplied by the Hartford trial, that subscription television holds a future potential of satisfying a public need. The Commission, of course, has adequate regulatory power to take care of any future unforeseen problems as they may arise.

It is noteworthy that, even if subscription television were authorized on a nation-wide basis, its growth and expansion will most likely develop gradually over a period of five or more years rather than overnight. Each potential subscription market would require franchise holders willing to make substantial capital investments in a new business. In many markets persons will have to be induced to apply for UHF channels so that these stations can be utilized as subscription outlets, and further time will be required for such persons to receive a grant from the Commission and to construct such stations. Subscription equipment manufacturers will have to tool up for mass production.

It is not unlikely that the expansion of subscription television will parallel to some extent the gradual growth of television stations during the pioneer period 1946-1950. Thus, our national system started in 1946 with ten television stations. In 1947, the second year, there were twelve stations operating in eight cities, and in 1948 there were thirty stations on the air in seventeen cities. At the end of 1948, there were only 460,000 television sets in circulation. By 1950, the fifth year, there were 107 television stations operating in 63 cities and there were approximately 12,500,000 receivers in the hands of the public. Ever since 1950, our national television system has shown gradual rather than overnight growth. While subscription television may have a somewhat more rapid growth and development due, among other things, to the fact that a vast majority of the American public already have television receivers in their homes which could receive subscription programs, its basic problems will be similar to those faced by the infant television industry. Risk capital ventures cautiously into new and untried businesses and momentum is gathered only after the first 10 or 20 pioneers have forged the business feasibility of the new business in the crucible of the market place. The gradual growth which may be reasonably anticipated will undoubtedly give the Commission time to view subscription's nationwide growth in an orderly manner, which will permit it to adapt the regulatory process as the need may arise, long before subscription television achieves any major nationwide penetration.

XII. SCOPE OF RELIEF REQUESTED.

A number of questions have been raised by the Commission in the past concerning the possible composition of a nation-wide subscription television system embracing such considerations as whether or not subscription television should be limited to a single technical system, whether or not it should be limited to multiple-station markets, whether or not it should be limited to UHF, etc. Since varying answers to each of these questions would substantially affect the type of authorization the Commission might grant for a nation-wide extension of subscription television, we are setting forth hereafter our views in connection therewith. In the interest of clarity we will follow a question and answer form in the following discussion.

1. Whether Subscription Television Operations Should Be Limited to a Single Technical System or Whether General Standards Should Be Provided Within Which a Number of Systems Might Operate.

In our opinion, the underlying policy of the Communications Act of encouraging competition dictates that the Commission adopt general technical standards within which more than one system might operate. These general standards could be limited to the following requirements:

(a) The system should be compatible with existing television service (both VHF and UHF and both monochrome and color) so that the millions of receiving sets now in the hands of the public and the transmitting equipment of existing broadcast stations can be used in this service.

(b) The system should not cause interference or have other undesirable effects within or without the assigned frequency band.

(c) Subscription service should result in no perceptible degradation of the quality of the video and audio signals received during either a subscription program or a non-subscription program.

2. Whether Subscription Operations in an Individual Community Should Be Confined to a Single Technical System.

We believed that it is very unlikely, as a practical matter, that more than one over-the-air subscription technical system would operate in an individual community. We see no reason, however, why the Commission should employ such a restriction by rule. From a regulatory viewpoint, the Commission's primary interest should be in the relationships which exist between franchise subscription systems and

television broadcast licensees, regardless of whether there is one franchise system or several operating in the community. It must also be recognized that there is a possibility that wired subscription systems and over-the-air subscription systems may operate in the same community.

3. Whether Nationwide Subscription Television Should Be Limited to Multi-Station Markets (four or more stations) or Whether It Should Be Permitted in All Markets, Including Single-Station Markets.

The underlying policy of Section 307(b) of the Communications Act, which requires the Commission to make a fair, efficient and equitable distribution of broadcast service among the several "communities," would appear to dicate that subscription television be made available in all markets. In short, if there is a demand for subscription service, the public in all markets is entitled to its benefits if someone is willing to supply it.

Subscription television itself has the potential of generating the construction of many new stations. To the extent that it achieves this, it should not matter whether the new station is the first station in the market or the second, third or fourth. As previously discussed in these comments, there is a strong probability that present stations in two-or-three-station markets would not carry any significant amount of subscription television programs at the outset because this would conflict with their present highly profitable network commitments. Thus, subscription television will have to support the creation of new UHF stations in such markets at the outset if it is to have adequate outlets.

In our opinion, issues involving whether subscription television should be permitted in markets with varying numbers of stations can best be handled on an *ad hoc* basis. For example, if subscription television could lead to the construction of a first television station in a community, it is difficult to conceive of any public interest consideration which would justify a restraint on the creation of such a new station.

4. Whether Subscription Television Should Be Confined to a Single Station in any Individual Community or Whether More Than One Station Should Be Authorized to Carry Programs.

The policy of competition sponsored by the Communications Act and the Commission's policy of encouraging competitive multiple television service should, in logic, extend to subscription programs as well

as to conventional programs. It would be contrary to these policies to limit subscription television programs to one station per community, although this issue might be considered under appropriate circumstances on an *ad hoc* basis.

As we have previously discussed, however, it is unlikely in the immediate foreseeable future that all stations in a community would apply to carry subscription programs. To repeat, the Hartford trial indicates a strong probability that stations will tend to be either dominantly subscription or dominantly conventional in their programming. It is also unlikely that network affiliates, the majority of which are VHF stations, will carry subscription programs because of the necessity of maintaining network clearances and continuity of audience. Nor is there any present indication that it would be more profitable for them to do so.

Another consideration is that there may be cases where it will be essential to authorize more than one non-network station to carry subscription programs, where more than one is available, in order to obtain sufficient time clearance to justify the installation of a subscription system.

5. Whether Stations Should Be Limited in the Amount of Time That They Can Devote to Subscription Programming.

In our opinion, it would be unduly complicated to limit the amount of time that any station can devote to subscription programming, except for a requirement that it broadcast the minimum hours of conventional programs required by Section 73.651 of the Commission's Rules. In many instances, particularly at the outset, there may be no more than one station carrying subscription programs. In such a case the station must be permitted to carry sufficient subscription programs to support the subscription system. Otherwise, no one will make the substantial capital investment required to install a subscription system in a community.

As previously discussed in detail, where more than one station in a community is authorized to perform subscription operations, there are practical considerations which will effectively restrict the total amount of subscription programming which can be carried by such stations; namely, (1) the limited quantity of box-office attractions and (2) the limited nature of the public's subscription recreational

budget. These restrictions apply equally whether the programs are carried by one or more than one station. Another practical limitation on the time which can be devoted to subscription television in any community arises from the improbability that network affiliates will desert their present and profitable network programming in order to carry any appreciable amount of subscription programming.

6. Whether Subscription Television Should Be Limited To Only UHF Stations.

While we have no doubt that UHF stations will be the greatest beneficiaries of expanded subscription television operations, we believe that subscription television should be made available to both UHF and VHF without discrimination. There is a possibility that if this is not done, some markets might be deprived of the benefits of subscription television. There are only thirteen communities out of the top 100 markets, as listed in Exhibit 4, which have more than three VHF channels allocated and/or in operation.[45] In the remaining 87 of the top 100 markets having three or less VHF channels available, the stations operating therein are all affiliated with one of the three networks. For reasons previously discussed, it is highly unlikely that any of the existing VHF stations operating in these 87 markets would be willing to surrender their profitable network affiliations in order to carry any significant amount of subscription programming. Indeed, many of the so-called non-network stations operating in the above-mentioned thirteen markets are presently operating profitably and as a result may not desire to carry any significant amount of subscription programming.

On the other hand, 95 of the top 100 television markets have, in the aggregate, 228 UHF frequencies available. This pool of 228 UHF frequencies represents the principal source of possible future station outlets for subscription television. It is also noteworthy that if any VHF channel in a market with three or less VHF channels should decide to give up its profitable network affiliation in order to carry subscription programs, such profitable network affiliation would become immediately available to some new UHF station, since, as we

[45] New York City; Los Angeles, California; Chicago, Illinois; San Francisco-Oakland, California; Washington, D.C.; St. Louis, Missouri; Minneapolis-St. Paul, Minnesota; Indianapolis-Bloomington, Indiana; Miami, Florida; Seattle-Tacoma, Washington; Lincoln-Kearney-Hastings-North Platte, Nebraska; Portland, Oregon; Denver, Colorado.

have already noted, it is most likely that stations will either be dominantly conventional or dominantly subscription in their programming because of the demands of both types of programming on prime time and the necessity of network affiliates to maintain time clearances and continuity of audience.

7. Whether Restrictions Should Be Placed Upon the Broadcast of Commercials During Subscription Programs.

While the Commission did not place any restrictions upon the broadcast of commercials during subscription programs in its First and Third Reports, RKO committed to carry no commercials on subscription programs during the Hartford trial and has not done so. In our opinion, the Commission should, in any nation-wide authorization of subscription television, specifically restrict the broadcast of commercials during subscription programs. While the major appeal of subscription television programs may be that they are of box-office quality, we believe that an additional appeal involves the absence of commercials. To combine commercials with subscription programs would merely serve to detract from the best that both subscription television and conventional television offer to the public without offering any countervailing benefits. It is not inconceivable that if commercials are prohibited on subscription programs, this will serve as a quality yardstick for sponsors in selecting conventional programming of a quality which could more effectively compete with subscription programming.

8. Whether Subscription Television Should Be Limited to Broadcasting Programs of a Box-Office Nature.

We recognize that it is difficult to precisely define by rule what is or what is not a box-office attraction for subscription purposes with sufficient clarity to cover all situations. Generally defined, a box-office attraction embraces any type of program which is not seen on a regular or frequent basis on conventional television and for which the public would ordinarily pay an admission charge. Since neither of these criteria is necessarily static, it may be undesirable to attempt to classify all types of programming into a rule. However, we request the Commission, in any decision authorizing subscription television on a nation-wide basis, to make clear that it will expect subscription programming to be of a box-office nature rather than duplicative of conventional programming.

XIII. DESCRIPTION OF SUBSCRIPTION RULE PROPOSED BY ZENITH AND TECO.

For convenience, we are incorporating at the end of this section a copy of the rule which we have, in our petition, proposed that the Commission adopt for the purpose of permitting subscription television operations on an extended nationwide basis. This proposed rule incorporates the answers to the questions set forth immediately above. A further description of the specific rule provisions proposed is set forth hereafter.

Scope. The rule proposed by Zenith and Teco to permit subscription operations on an extended nationwide basis, would not, without more, automatically authorize all television stations to broadcast subscription programs. Rather, under the Zenith-Teco proposal, any television station desiring to broadcast subscription programs would have to first file with the Commission an application for subscription television authorization. The grant or denial of individual applications for subscription television authorization would be decided on a case-to-case basis in light of the public interest considerations which might be involved in the particular case. Zenith and Teco submit that such a case-to-case approach under a subscription television rule would provide flexibility which would better serve the ultimate public interest than would an approach whereby the Commission attempted by rule to restrict subscription operations to a particular type of station or to particular markets.

A brief description of the other specific provisions in the rule proposed is as follows:

(a) *Section 73.641.* This section contains definitions of the terms used throughout the proposed rules.

(b) *Section 73.642.* This section covers the filing of applications for subscription television authorizations and the procedures which will be followed by the Commission in determining whether such applications should be granted or denied.

(c) *Section 73.643.* This section sets forth certain licensing policies which will be applied by the Commission in granting subscription television authorizations. These policies are designed primarily for the purpose of making certain that the television station broadcasting subscription programs will retain ultimate control over its operations

in a manner which will at all times permit it to fulfill its duties and responsibilities to broadcast in the public interest and to prevent monopolistic growth of subscription television in the fields of station operation and program distribution.

(d) *Section 73.644.* This section provides that no commercial advertising announcements shall be carried during subscription broadcasts. It also provides that charges, terms and conditions of service to subscribers shall be applied uniformly: provided, however, that subscribers may be divided into reasonable classifications and that different conditions may be applied to subscribers in different classifications. It further provides that television stations authorized to broadcast subscription programs shall also broadcast conventional programs. This section also establishes the procedures which may be followed by the manufacturers of subscription television equipment in obtaining advance type approval and type acceptance of their equipment.

PROPOSED SUBSCRIPTION RULE

SUBSCRIPTION TELEVISION OPERATIONS

§ 73.641. *DEFINITIONS.*

(a) *Television station.* The term "television station" means any UHF or VHF licensee or permittee or applicant for a UHF or VHF construction permit.

(b) *Approved subscription television system.* The term "approved subscription television system" means any technical system utilized in subscription television operations approved by the Commission upon a finding that (1) the system will not cause interference or have any undesirable effects within or without the assigned frequency band; and (2) the system will not cause any perceptible degradation in the quality of the video or audio signal received during either a subscription program or a non-subscription program.

(c) *Television market.* The term "television market" means any community which has or may have a UHF or VHF channel allocated to it.

(d) *Subscription program.* The term "subscription program" means any program broadcast over an approved subscription television system in such a manner that the program cannot be viewed by members of the public without incurring a charge or fee.

(e) *Subscription broadcast.* The term "subscription broadcast" means the period during which subscription programs are scheduled and broadcast, which shall include all times during which a television station is transmitting an approved subscription television signal.

(f) *Commercial advertising announcement.* The term "commercial advertising announcement excludes station promotions of future subscription programs at the beginning and ending of subscription broadcasts.

§ 73.642. *APPLICATIONS AND AUTHORIZATIONS.*

(a) Any television station located in a television market and desiring to engage in subscription television operations shall first file with the Commission an application for subscription television authorization in such manner and form as the Commission may hereafter prescribe.

(b) If the Commission, upon examination of such application and upon consideration of such other matters as the Commission may officially notice, finds that the public interest, convenience and necessity would be served by the granting thereof, it will grant such application. In the event it is unable to make such a finding, the Commission will then formally designate the application for subscription television authorization for hearing and proceed pursuant to the provisions of Section 309(e) of the Communications Act and the Commission's Rules and Regulations applicable thereto. The Commission may impose such conditions upon the grant as may be appropriate, based upon the circumstances prevailing in each television market.

(c) Applications for subscription television authorization shall be accompanied by a statement signed by the patentee, licensee, manufacturer or franchise holder of an approved subscription television system that such party will commence installation of an approved subscription television system in the applicant's television market within one year after the grant of the television station's application for subscription television authorization, unless such a system is already installed in applicant's television market.

(d) A subscription television authorization will ordinarily be issued for a period which will be coterminous with the regular license period of a television station.

§ 73.643. *LICENSING POLICIES.*

(a) No subscription television authorization shall be granted to a television station having any contract, arrangement or understanding, express or implied, with a patentee, licensee, manufacturer or franchise holder of an approved subscription television system which

gives such station the exclusive right to use such approved subscription television system in its television market, or which prevents the use of such approved subscription television system by other television stations which have been authorized by the Commission to broadcast subscription programs in the same television market; nor shall a subscription television authorization be granted to a television station having any agreement or understanding which would prevent it from using any other approved subscription television system which may operate in its television market.

(b) No subscription television authorization shall be granted to a television station having any contract, arrangement or understanding, express or implied, which prevents the station from (1) rejecting or refusing any subscription program which the station reasonably believes to be unsatisfactory or unsuitable or contrary to the public interest; or (2) substituting a subscription or conventional program which in the station's opinion is of greater local or national importance.

(c) No subscription television authorization shall be granted to a television station having any contract, arrangement or understanding, express or implied, which delegates to any other person the right to schedule the hours of transmission of subscription programs; provided, however, that this rule shall not prevent a television station from entering into an agreement or arrangement whereby it agrees to schedule a specific subscription program at a specific time.

(d) No subscription television authorization shall be granted to a television station having any contract, arrangement or understanding, express or implied, which prevents the television station from making a free choice of subscription programs, whatever their source.

(e) No subscription television authorization shall be granted to a television station having any contract, arrangement or understanding, express or implied, which deprives the television station of the right of ultimate decision concerning the maximum amount of any subscription program charge or fee.

§ 73.644. *GENERAL OPERATING REQUIREMENTS.*

(a) No commercial advertising announcements shall be carried during subscription broadcasts.

(b) Charges, terms and conditions of service to subscribers shall be applied uniformly: provided, however, that subscribers may be divided into reasonable classifications, and the imposition of different sets of terms and conditions may be applied to subscribers in different classifications.

(c) Any television station authorized to broadcast subscription programs shall broadcast, in addition to its subscription broadcasts,

the minimum hours of programs required by Section 73.651 of the Rules.

(d) Except as they may be otherwise waived by the Commission in authorizations issued hereunder, the rules applicable to regular television broadcast stations will be applicable to subscription television operations; provided, however, that no television station proposing to broadcast subscription television programs over an approved subscription television system will be required to request or receive any waiver of any technical rule of the Commission which might otherwise prevent the transmission of the type of scrambled audio or video signal which is essential to subscription operations.

(e) Advance approval of subscription television equipment will be made by the Commission pursuant to the "type approval" and "type acceptance" procedures now established by Part 2, Subpart F—Equipment Type Approval and Type Acceptance—of the Commission's Rules and Regulations.

CONCLUSION

The only new facts developed concerning broadcast subscription television since the Commission concluded in its First and Third Reports that it would reserve its ultimate judgment until suitable trial demonstrations of subscription television could be held are those available from the Hartford subscription trial. These facts have now been published in detail so that they may be examined by the Commission and all other interested parties. The Commission held in its First Report that when meaningful data were available from trial subscription television operations, it would conduct further rule-making proceedings in which all interested parties would have full opportunity to submit information, data and views on the issues remaining to be answered in reaching a decision as to whether the authorization of a subscription television service on some extended or continuing basis would serve the public interest.

The three-year Hartford trial period is now drawing to a close. The information which can be obtained from that trial is now available. The time has come, therefore, for this rule-making proceeding to go forward in the manner contemplated by the Commission.

For illustrative purposes, we are attaching hereto as Exhibit 5 a suggested Notice of Further Proposed Rule Making in this proceeding which the Commission might issue in order to place the remaining issues concerning nationwide authorization of subscription television in proper focus for an expeditious final determination.

On the basis of the foregoing premises and all the facts of record, it is respectfully submitted that the Commission should find that the public interest, convenience and necessity will be served by the granting of Zenith's petition for further rule making filed simultaneously with these comments.

Respectfully submitted,

ZENITH RADIO CORPORATION

By W. THEODORE PIERSON
VERNON C. KOHLHAAS
WILLIAM S. GREEN
W. THEODORE PIERSON, JR.
PIERSON, BALL AND DOWD
1000 Ring Bldg.
Washington, D. C.

TECO INC.

By PHILLIP G. LOUCKS
LOUCKS AND IMLAY
1317 F Street N.W.
Washington, D. C.

Of Counsel:

FOR ZENITH RADIO CORPORATION
GREGGAR P. SLETTELAND

For Teco, Inc.
GEORGE E. HOWELL
TENNEY, BENTLEY, GUTHRIE & HOWELL
Chicago, Illinois

March 10, 1965

EXHIBITS

1. List of 599 Subscription Programs Shown During First Two Years of Hartford Trial by Program Category and Audience Rating.

2. Average Weekly Program Expenditures by Subscriber Income Level.

3. Average Monthly Program Viewing in Dollar Amounts.

4. Top 100 Markets for 1964 Rated by Number of Television Homes.

5. Suggested Notice of Proposed Rule Making.

Exhibit 1
Page 1

LIST OF 599 HARTFORD SUBSCRIPTION PROGRAMS

TABULATION OF 414 U. S. FEATURE FILMS SHOWN DURING FIRST TWO YEARS (104 WEEKS) OF HARTFORD PHONEVISION OPERATION
(LISTED IN ORDER OF CUMULATIVE RATING FOR ALL SHOWINGS)

FIRST RUN FILM

TITLE OF FILM	WEEKS SHOWN	AVERAGE NO. OF SUBSCRIBER HOMES FOR ALL DATES SHOWN	TOTAL NO. OF VIEWING SUBSCRIBERS FOR ALL DATES SHOWN	PERCENTAGE CUMULATIVELY VIEWING ALL SHOWINGS	NO. OF SHOWINGS	AVERAGE PERCENTAGE VIEWING EACH SHOWING
The Kitchen	26	1614	183	10.7%	2	5.3%

FIRST SUBSEQUENT RUN FILMS
(Shown several weeks after first theater run)

Whatever Happened to Baby Jane	26 & 53	2149	1743	81.1%	5	16.2%
PT 109	62 & 98	3987	2636	66.1%	8	8.3%
Days of Wine and Roses	45 & 74	2742	1799	65.6%	7	9.4%
Notorious Landlady	12 & 38	1365	889	65.1%	8	8.1%
Diamond Head	41 & 76	2299	1480	64.4%	7	9.2%
Counterfeit Traitor	9 & 29	1071	690	64.2%	6	10.7%
Gypsy	34 & 70	2552	1828	59.9%	7	8.6%
Irma La Douce	86	4129	2446	59.2%	6	9.9%
The Interns	16 & 41	1670	976	58.4%	8	7.3%
Hatari	15 & 73	2143	1250	58.3%	7	8.3%
The Music Man	17 & 44	1652	912	55.2%	7	7.9%
Donovan's Reef	61 & 93	3964	2050	51.7%	8	6.5%
Under the Yum Yum Tree	82	3798	1898	50.0%	5	10.0%
Love with the Proper Stranger	93	4715	2209	46.9%	5	9.4%
The L-Shaped Room	88	4432	2070	46.7%	6	7.8%
Come Blow Your Horn	65	3139	1367	43.6%	5	8.7%
Barabbas	33 & 65	2505	1083	43.2%	7	6.2%
The Incredible Journey	84	3997	1661	41.6%	5	8.3%
The Man from the Diners Club	47 & 78	2852	1185	41.6%	7	5.9%
Bye Bye Birdie	63	3277	1358	41.5%	5	8.3%
The Prize	99	4739	1952	41.4%	6	6.9%
Son of Flubber	46	2221	900	40.5%	4	10.1%
Requiem for a Heavyweight	22 & 63	2425	960	39.6%	6	6.6%
The Sword in the Stone	91	4635	1825	39.4%	9	4.4%
Miracle of the White Stallions	48	2322	911	39.1%	4	9.8%
Who's Been Sleeping in My Bed?	92	4663	1786	38.3%	9	4.3%
Strait Jacket	95	4755	1814	38.2%	5	7.6%
Lad, A Dog	1 & 78	1892	691	36.8%	6	6.1%
4 for Texas	87	4337	1543	35.6%	5	7.1%
Wheeler Dealers	99	4869	1536	33.7%	6	5.6%
20,000 Leagues Under the Sea	78	3596	1209	33.6%	5	6.7%
Flipper	62	3241	1085	33.5%	4	8.4%
Spencer's Mountain	60	3165	1054	33.3%	4	8.3%
The Victors	101	4736	1565	33.1%	5	6.6%
Who's Minding the Store?	86	4190	1387	33.1%	5	6.6%
Mary, Mary	79	3635	1191	32.8%	5	6.6%
The Incredible Mr. Limpet	100	4734	1538	32.5%	5	6.5%
A New Kind of Love	80	3657	1172	32.1%	5	6.4%
Dead Ringer	90	4533	1440	31.8%	5	6.4%
The Misadventures of Merlin Jones	96	4757	1464	30.8%	4	7.7%
A Very Private Affair	28	1771	544	30.7%	2	15.4%
The Courtship of Eddie's Father	53	2774	847	30.5%	4	7.6%
Nutty Professor	66	3354	1008	30.0%	4	7.5%

Exhibit 1
Page 2

TABULATION OF 414 U. S. FEATURE FILMS SHOWN DURING FIRST TWO YEARS (104 WEEKS) OF HARTFORD PHONEVISION OPERATION (LISTED IN ORDER OF CUMULATIVE RATING FOR ALL SHOWINGS)

FIRST SUBSEQUENT RUN FILMS
(Shown several weeks after first theater run)

TITLE OF FILM	WEEKS SHOWN	AVERAGE NO. OF SUBSCRIBER HOMES FOR ALL DATES SHOWN	TOTAL NO. OF VIEWING SUBSCRIBERS FOR ALL DATES SHOWN	PERCENTAGE CUMULATIVELY VIEWING ALL SHOWINGS	NO. OF SHOWINGS	AVERAGE PERCENTAGE VIEWING EACH SHOWING
Savage Sam	60	3154	942	29.9%	4	7.5%
The War Lover	29	1832	546	29.8%	4	7.5%
Palm Springs Weekend	85	4095	1204	29.4%	5	5.9%
McLintock	98	4730	1375	29.1%	5	5.8%
Escape from Zahrain	1 & 20	677	198	29.0%	5	5.8%
Sunday in New York	97	4742	1359	28.9%	5	5.8%
Kings of the Sun	94	4718	1344	28.5%	5	5.7%
Lady and the Tramp	21	1454	404	27.8%	2	13.9%
The Running Man	75	3527	976	27.7%	4	6.9%
Paris When It Sizzles	102	4767	1248	26.2%	5	5.2%
Critic's Choice	51	2618	679	25.9%	4	6.5%
3 Stooges in Orbit	13	967	247	25.5%	3	8.5%
Follow the Boys	54	2857	726	25.3%	4	6.3%
Day of the Triffids	57	3092	766	25.1%	4	6.3%
My Six Loves	52	2676	668	25.0%	4	6.2%
Wives and Lovers	77	3500	867	24.8%	4	6.2%
America America	96	4761	1175	24.7%	6	4.1%
Jason and the Argonauts	55	2963	729	24.6%	4	6.2%
Papa's Delicate Condition	50	2387	576	24.2%	4	6.1%
Island of Love	56	3043	723	23.8%	4	5.9%
The Old Dark House	76	3522	838	23.8%	4	6.0%
A Girl Named Tamiko	43	2126	495	23.3%	4	5.8%
Guns of Darkness	15	1124	261	23.2%	3	7.7%
Captain Sinbad	59	3140	727	23.2%	4	5.8%
Almost Angels	23	1582	363	23.0%	3	7.7%
Gay Purree	31	1824	411	22.5%	4	5.6%
Summer Magic	66	3359	752	22.4%	4	5.6%
Children of the Damned	95	4759	1059	22.3%	5	4.5%
The Mouse on the Moon	94	4741	1052	22.2%	5	4.4%
Kissin Cousins	103	4784	1059	22.2%	5	4.4%
The Pink Panther	104	4761	1041	21.9%	5	4.4%
The Pigeon That Rook Rome	27	1752	383	21.9%	2	10.9%
The Main Attraction	60	3179	685	21.6%	2	10.5%
Come Fly With Me	59	3112	665	21.4%	4	5.4%
Jumbo	40	2074	440	21.2%	4	5.3%
It's Only Money	32	1822	378	20.7%	4	5.3%
Soldier in the Rain	98	4737	979	20.7%	2	10.4%
Rampage	73	3455	693	20.0%	5	4.1%
					4	5.0%
It Happened at the World's Fair	58	3093	616	19.9%	4	5.0%
Samar	2	232	43	18.5%	2	9.3%
A Ticklish Affair	67	3362	619	18.4%	4	4.6%
Gidget Goes to Rome	67	3357	612	18.2%	4	4.6%
Who's Got the Action	39	2066	375	18.2%	3	6.1%
The Castilian	71	3378	605	17.9%	4	4.5%
A Global Affair	95	4777	843	17.7%	5	3.5%
Best of Enemies	25	1657	283	17.1%	3	5.7%
Damn the Defiant	17	1307	208	15.9%	3	5.3%
Girls! Girls! Girls!	29	1792	283	15.8%	2	7.9%
I Thank A Fool	21	1664	234	14.1%	3	4.7%
Murder at the Gallop	93	4694	730	15.5%	7	2.2%
Night Must Fall	103	4792	739	15.4%	5	3.1%
Period of Adjustment	35	1973	299	15.2%	4	3.8%
2 Weeks in Another Town	30	1833	272	14.8%	2	7.4%
The Password is Courage	36	2017	290	14.4%	4	3.6%
Damon and Pythias	24	1608	219	13.6%	2	6.8%
Term of Trial	39	2063	271	13.1%	3	4.4%
Wall of Noise	70	3351	423	12.6%	4	3.2%
All the Way Home	89	4497	554	12.3%	5	2.5%
The Hook	44	2131	261	12.2%	3	4.1%
A Tiger Walks	104	4769	570	12.0%	2	6.0%
Cattle King	69	3380	393	11.7%	4	2.9%
Count of Monte Cristo	16	1196	140	11.7%	3	3.9%
Two Tickets to Paris	19	1396	154	11.0%	3	3.7%
Escape from East Berlin	28	1775	185	10.4%	2	5.2%
Maniac	78	3504	369	10.3%	3	3.4%
Law of the Lawless	104	4780	460	9.6%	4	2.4%
Where the Truth Lies	39	2067	191	9.2%	3	3.1%
Act One	104	4774	433	9.1%	5	1.8%
Son of Captain Blood	104	4762	435	9.1%	2	4.6%
Ring-A-Ding Rhythm	19	1420	121	8.5%	3	2.8%
Savage Guns	28	1771	150	8.5%	2	4.2%
We'll Bury You	23	1593	107	6.7%	3	2.2%
Swordsman of Siena	36	2011	103	5.1%	3	1.7%
Grand Total (116 Films)			102297	27.3%	516	6.1%

86-399 O - 67 - 21

Exhibit 1
Page 3

TABULATION OF 414 U. S. FEATURE FILMS SHOWN DURING FIRST TWO YEARS (104 WEEKS) OF HARTFORD PHONEVISION OPERATION
(LISTED IN ORDER OF CUMULATIVE RATING FOR ALL SHOWINGS)

OLDER FEATURE FILMS
(Over 6 Months in Theater Release)

TITLE OF FILM	WEEKS SHOWN	AVERAGE NO. OF SUBSCRIBER HOMES FOR ALL DATES SHOWN	TOTAL NO. OF VIEWING SUBSCRIBERS FOR ALL DATES SHOWN	PERCENTAGE CUMULATIVELY VIEWING ALL SHOWINGS	NO. OF SHOWINGS	AVERAGE PERCENTAGE VIEWING EACH SHOWING
The World of Suzie Wong	9 & 30	1064	758	71.4%	6	11.9%
Hud	64 & 100	3940	2430	61.7%	9	6.9%
Lolita	62 & 104	4106	2319	56.5%	7	8.1%
Guns of Navarone	25 & 48	1588	1114	70.2%	6	9.4%
The Chapman Report	48 & 79	2988	1671	55.9%	6	9.3%
Breakfast at Tiffany's	2 & 24	930	513	55.2%	4	13.8%
The Delicate Delinquent	12 & 84	2387	1245	52.2%	4	13.0%
Roman Spring of Mrs. Stone	11 & 37	1397	695	49.8%	6	8.3%
Sweet Bird of Youth	14 & 40	1866	747	48.0%	6	8.0%
101 Dalmatians	10	747	342	45.8%	4	11.4%
Dark at the Top of the Stairs	6 & 25	1089	486	44.6%	4	11.2%
Sail a Crooked Ship	10 & 34	1143	510	44.6%	6	7.4%
The Great Escape	83	3898	1728	44.3%	3	8.9%
Parrish	2 & 21	1061	464	43.8%	3	14.6%
Hell is for Heroes	7 & 28	1063	462	43.5%	5	8.7%
West Side Story	87	4326	1837	42.5%	6	7.1%
Boy's Night Out	17 & 42	1696	717	42.3%	6	7.0%
The V. I. P.'s	89	4452	1836	41.2%	6	6.9%
Mein Kampf	22 & 43	1816	736	40.5%	6	6.8%
It Started in Naples	7 & 28	1164	470	40.4%	4	10.1%
Sunrise at Campobello	1 & 19	770	307	40.0%	4	10.0%
Fanny	5 & 27	1055	411	39.0%	4	9.7%
Splendor in the Grass	1 & 20	1031	400	38.7%	3	12.9%
Moon Pilot	2	452	174	38.5%	2	19.3%
Walk on the Wild Side	51	2541	936	36.8%	3	12.3%
The Pajama Game	12	895	318	35.5%	3	11.8%
Two for the Seesaw	94	4744	1677	35.4%	5	7.1%
A Majority of One	3 & 23	926	326	35.2%	4	8.8%
One-Eyed Jacks	1 & 57	2441	852	34.9%	5	7.0%
The Time Machine	38 & 66	2832	987	34.9%	5	7.0%
Safe at Home	10 & 87	2527	883	34.6%	4	5.8%
Summer and Smoke	3 & 22	912	315	34.4%	4	8.6%
Toys in the Attic	97	4755	1625	34.2%	5	6.8%
Jungle Cat	8	681	230	33.8%	2	11.3%
The Horizontal Lieutenant	14 & 39	1551	520	33.6%	4	5.6%
Elmer Gantry	58	2909	966	33.2%	4	8.3%
Pinocchio	7	589	195	33.1%	1	11.0%
Judgment at Nuremberg	45	2139	704	32.9%	4	8.0%
The Raven	93	4698	1510	32.2%	5	6.4%
The Caretakers	104	4778	1530	32.0%	5	10.5%
Swiss Family Robinson	17	1317	416	31.6%	3	6.3%
The Errand Boy	5 & 49	1572	492	31.3%	5	6.3%
Portrait of a Mobster	10 & 31	1166	369	31.6%	3	6.3%
Pepe	37 & 60	2678	817	30.5%	5	6.1%
Birdman of Alcatraz	50	2432	741	30.5%	5	10.2%
El Cid	103	4789	1448	30.3%	5	6.1%
Manchurian Candidate	101	4728	1421	30.1%	5	6.0%
Visit to a Small Planet	6	543	161	29.7%	2	14.8%
In Search of the Castaways	50	2489	733	29.5%	3	9.8%
Operation Bikini	82	3755	1105	29.4%	4	7.4%
The Parent Trap	32	1829	538	29.4%	4	9.8%
The Miracle Worker	89	3347	957	28.6%	4	7.2%
The Bramble Bush	80	3664	1040	28.4%	4	7.1%
Konga	83	3896	1098	28.2%	3	9.4%
Damn Yankees	2	232	65	28.0%	2	14.0%
Jack the Giant Killer	89	4899	1233	27.4%	5	9.1%
Journey to the 7th Planet	85	4094	1111	27.2%	5	9.1%
Legend of Lobo	30	1831	493	26.9%	3	9.0%
Darby's Rangers	3	351	93	26.5%	2	13.3%
Twinkle and Shine	10	791	208	26.3%	3	8.8%
Merrill's Marauders	83	3939	1032	26.2%	4	6.6%
The Sad Sack	10	770	198	25.7%	3	8.6%
Elephant Walk	13	937	241	25.7%	3	8.6%
Fabulous World of Jules Verne	9	721	183	25.4%	3	8.5%
Pollyanna	15	1184	284	25.3%	3	8.4%
Twilight of Honor	91	4649	1160	25.0%	6	4.2%
Tall Story	7 & 44	1521	384	25.0%	3	8.3%
Beauty and the Beast	90	4557	1133	24.9%	3	8.3%
War and Peace	57	3004	735	24.5%	3	8.2%
A Summer Place	76	5528	861	24.4%	3	8.1%
By Love Possessed	84	4043	975	24.1%	4	6.0%
All in a Night's Work	18	1331	321	24.1%	3	8.0%

Exhibit 1

Page 4

TABULATION OF 414 U. S. FEATURE FILMS SHOWN DURING FIRST TWO YEARS (104 WEEKS) OF HARTFORD PHONEVISION OPERATION
(LISTED IN ORDER OF CUMULATIVE RATING FOR ALL SHOWINGS)

OLDER FEATURE FILMS
(Over 6 Months in Theater Release)

TITLE OF FILM	WEEKS SHOWN	AVERAGE NO. OF SUBSCRIBER HOMES FOR ALL DATES SHOWN	TOTAL NO. OF VIEWING SUBSCRIBERS FOR ALL DATES SHOWN	PERCENTAGE CUMULATIVELY VIEWING ALL SHOWINGS	NO. OF SHOWINGS	AVERAGE PERCENTAGE VIEWING EACH SHOWING
The Tempest	86	4195	1000	23.9%	3	8.0%
Call Me Bwana	92	4655	1107	23.8%	6	4.0%
Don't Give Up the Ship	79	3622	863	23.8%	3	7.9%
Greyfriar's Bobby	19	1374	325	23.6%	3	7.9%
Susan Slade	34	1980	463	23.4%	3	7.8%
3 Stooges Go Around the World	73	3472	803	23.1%	3	7.7%
Alakazam the Great	80	3645	835	22.9%	3	7.6%
The Wonders of Aladdin	21	1407	339	22.9%	3	7.6%
The Sundowners	2 & 42	1341	352	22.8%	6	3.8%
Experiment in Terror	54	2868	645	22.5%	3	7.5%
Mysterious Island	75	3514	788	22.4%	3	7.5%
Drums of Africa	88	4387	978	22.3%	3	7.4%
Desire Under the Elms	19	1412	312	22.1%	3	7.4%
The Man Who Shot Liberty Valance	71	3326	742	21.8%	4	5.5%
The Crowded Sky	7	609	133	21.8%	2	10.9%
The Misfits	45	2173	471	21.7%	3	7.2%
The 4 Horsemen of the Apocalypse	30	1825	394	21.6%	2	10.8%
House of Usher	81	3696	797	21.6%	3	7.2%
Duel of the Titans	88	3975	860	21.6%	3	7.2%
Rock-A-Bye Baby	81	3732	801	21.5%	4	5.4%
Flipper	94	4735	1010	21.3%	4	5.3%
Zotz	16	1220	260	21.3%	3	7.1%
The Young Philadelphians	37	2031	433	21.3%	3	7.1%
Picnic	43	2119	450	21.2%	3	7.1%
All Fall Down	18	1363	288	21.1%	3	7.0%
Billy Budd	55	2912	614	21.1%	4	5.3%
Nikki, Wild Dog of the North	28	1766	373	21.1%	3	7.0%
Career	63	3227	681	21.1%	3	7.0%
Bon Voyage	49	2391	502	21.0%	3	7.0%
The 3 Worlds of Gulliver	30	1833	382	20.8%	2	10.4%
The Pleasure of His Company	1 & 58	2348	490	20.8%	4	5.2%
War of the Worlds	41	2098	431	20.6%	3	6.9%
X Man with the Xray Eyes	92	4579	936	20.4%	4	5.1%
Have Rocket, Will Travel	88	1772	359	20.3%	2	10.1%
Naked Jungle	13	995	202	20.3%	3	6.8%
Stolen Hours	91	4623	938	20.3%	6	3.4%
Never So Few	68	3358	677	20.2%	3	6.7%
Under Two Flags	19	1375	276	20.1%	3	6.7%
Separate Tables	51	2617	525	20.1%	3	6.7%
Big Red	54	2851	569	20.0%	3	6.7%
Up Periscope	35	2005	400	20.0%	3	6.7%
Auntie Mame	21	1481	293	19.8%	1	19.8%
Gunfight at OK Corral	77	3544	697	19.7%	3	6.6%
Kidnapped	14	959	188	19.6%	3	6.5%
Roman Holiday	37	2030	397	19.6%	4	4.9%
Sword of the Conqueror	81	3706	724	19.5%	3	6.5%
Siege of Syracuse	8	639	124	19.4%	2	9.7%
Babes in Toyland	26	1729	333	19.3%	1	19.3%
Siege of the Saxons	77	3547	683	19.3%	3	6.4%
3 Stooges Meet Hercules	18	1340	258	19.3%	3	6.4%
Love is a Ball	71	3373	647	19.2%	4	4.8%
The Man Who Knew Too Much	53	2843	544	19.1%	3	6.4%
The Clown and Kid	91	4617	871	18.9%	4	4.7%
Battle In Outer Space	34	1924	363	18.9%	2	9.4%
The Young and the Brave	92	4649	874	18.8%	3	6.3%
Gold of the 7 Saints	6	509	95	18.7%	2	9.3%
Samson and Delilah	51	2535	472	18.6%	3	6.2%
The Young Doctors	72	3399	632	18.6%	3	6.2%
John Paul Jones	4 & 43	1442	267	18.5%	3	3.7%
The Secret of Monte Cristo	82	3800	700	18.4%	3	6.1%
Underwater City	24	1585	292	18.4%	3	6.1%
Breath of Scandal	14	1047	192	18.3%	3	6.1%
Bashful Elephant	72	3413	625	18.3%	3	6.1%
Go Naked in the World	37	2031	367	18.1%	4	4.5%
Please Don't Eat the Daisies	40	2097	375	17.9%	4	4.5%
Naked Edge	47	2254	401	17.9%	3	6.0%
Paris Blues	48	2332	417	17.9%	3	6.0%
The White Warrior	5	472	84	17.8%	2	8.9%
Hand in Hand	35 & 61	2712	482	17.8%	3	3.6%
The Trouble with Harry	59	3077	547	17.8%	3	5.9%
The Haunting	86	4222	754	17.8%	4	4.5%
Where the Boys Are	46	2226	397	17.8%	3	5.9%
Vertigo	88	4414	778	17.6%	4	4.4%
Everything's Ducky	23	1542	272	17.6%	3	5.9%

Exhibit 1
Page 5

TABULATION OF 414 U. S. FEATURE FILMS SHOWN DURING FIRST TWO YEARS (104 WEEKS) OF HARTFORD PHONEVISION OPERATION
(LISTED IN ORDER OF CUMULATIVE RATING FOR ALL SHOWINGS)

OLDER FEATURE FILMS
(Over 6 Months in Theater Release)

TITLE OF FILM	WEEKS SHOWN	AVERAGE NO. OF SUBSCRIBER HOMES FOR ALL DATES SHOWN	TOTAL NO. OF VIEWING SUBSCRIBERS FOR ALL DATES SHOWN	PERCENTAGE CUMULATIVELY VIEWING ALL SHOWINGS	NO. OF SHOWINGS	AVERAGE PERCENTAGE VIEWING EACH SHOWING
The Invisible Boy	36	2024	351	17.4%	2	8.7%
Pressure Point	73 & 82	3568	617	17.3%	4	4.3%
In the Cool of the Day	52	3099	534	17.2%	3	5.7%
30 Foot Bride of Candyrock	29	1693	289	17.1%	2	8.5%
The Comedy of Terrors	99	4739	812	17.1%	4	4.3%
7 Seas to Calais	62	3201	537	16.8%	3	5.5%
Raisin in the Sun	50	2514	422	16.8%	3	5.6%
Buccaneer	80	3635	609	16.7%	3	5.6%
The Haunted Palace	84	3957	661	16.7%	4	4.2%
The Black Orchid	37	2027	338	16.7%	4	4.2%
Bridge to the Sun	25 & 52	2290	382	16.7%	3	5.5%
The Pit and the Pendulum	102	4762	784	16.5%	4	4.1%
Magic Sword	69	3358	553	16.5%	3	5.5%
Too Late Blues	4	443	73	16.5%	2	8.2%
Steel Claw	7	666	109	16.4%	2	8.2%
Boy Who Stole a Million	79	3529	573	16.2%	3	5.4%
Gidget Goes Hawaiian	33	1898	306	16.1%	3	5.4%
Summer Holiday	102	4775	762	16.0%	4	4.0%
Rat Race	74 & 82	3750	597	15.9%	3	5.3%
Shoot Out at Medicine Bend	11	454	132	15.8%	3	5.3%
Jessica	98	4676	726	15.5%	4	3.9%
1 2 3	89	4485	696	15.5%	3	5.1%
That Kind of Woman	90	4579	710	15.5%	3	5.1%
Fast and Sexy	41	2114	325	15.4%	3	5.1%
Lil Abner	72	3437	530	15.4%	3	5.1%
The Slave	65	3309	509	15.4%	3	5.1%
A Fever in the Blood	20	1451	224	15.4%	2	7.7%
White Christmas	79	3628	556	15.3%	3	5.1%
Brushfire	2 & 41	1172	179	15.3%	2	7.6%
Rome Adventure	1	209	30	14.5%	1	14.5%
Bells are Ringing	53	2807	419	14.9%	3	5.0%
The Journey	47	2276	338	14.8%	3	4.9%
Twist Around the Clock	13	1027	151	14.7%	2	7.3%
Fancy Pants	40	2077	305	14.7%	2	7.3%
Merry Andrew	27	1739	252	14.5%	2	7.2%
Ask Any Girl	47	2260	328	14.5%	3	4.8%
Shocker	46	2192	315	14.4%	3	4.8%
Magic Boy	25	1633	231	14.2%	2	7.1%
Bachelor in Paradise	25	1681	237	14.1%	2	7.1%
Gunfight at Comanche Creek	101	4747	669	14.0%	4	3.5%
The Devil at 4 O'Clock	27	1744	244	14.0%	2	7.0%
The Colossus of Rhodes	33	1876	260	13.9%	2	6.9%
Cash McCall	4	381	53	13.9%	1	13.9%
The Mountain	23	1555	215	13.8%	2	6.9%
Geronimo	36	2211	300	13.6%	3	4.5%
Look Back in Anger	26	1714	232	13.5%	2	6.8%
Only Two Can Play	26	1698	230	13.5%	2	6.8%
West Street	22	1507	200	13.3%	3	4.4%
Adventures of Huckleberry Finn	33	1867	248	13.3%	5	6.6%
Malaga	6	538	71	13.2%	2	6.6%
Circus of Horrors	93	4717	622	13.2%	4	3.3%
Sword of Sherwood Forest	71	3374	445	13.2%	2	6.5%
The Enemy General	35	1999	261	13.1%	3	4.4%
Wreck of the Mary Deare	42	2119	275	13.0%	3	4.3%
Follow That Dream	45	2177	281	12.9%	3	4.3%
The Trap	36	2018	260	12.9%	4	3.2%
Studs Lonigan	97	4733	601	12.7%	3	4.2%
Light in the Piazza	24	1608	204	12.7%	4	3.1%
Black Sunday	96	4759	598	12.6%	4	3.2%
The Hangman	49	2425	302	12.5%	3	4.2%
The Angry Hills	38	2057	257	12.5%	3	4.2%
Heavens Above	90	4574	565	12.4%	5	2.5%
Last Year at Marienbad	21	1476	180	12.2%	3	4.1%
Mysterious Island	31	1824	223	12.2%	3	4.0%
Last Train from Gun Hill	70	3341	404	12.1%	2	6.1%
A Place in the Sun	29	1826	221	12.1%	2	6.1%
The Honeymoon Machine	31	1825	221	12.1%	4	3.0%
Kill or Cure	44	2040	246	12.1%	4	3.0%
Comanche Station	29	2127	253	11.9%	3	3.9%
The Legend of Tom Dooley	63	1804	212	11.8%	2	5.9%
Five Finger Exercise	63	3262	383	11.7%	3	3.9%
Watusi	70	3351	392	11.7%	2	5.8%
Claudelle Inglish	36	1838	214	11.6%	2	5.8%
Yellowstone Kelly	26	1720	199	11.6%	2	5.8%
Season of Passion	23	1565	182	11.6%	2	5.7%
The Giant of Marathon	39	2064	237	11.5%	3	3.8%
The Hellions	14	1098	126	11.5%	2	5.7%
Blood and Roses	6	585	67	11.5%	2	5.7%
Savage Innocents	73	3522	405	11.5%	3	3.8%
Hero's Island	55	2959	337	11.4%	3	3.8%
The Tin Star	20	1457	165	11.3%	3	3.7%
Kid Galahad	53	2838	316	11.2%	3	3.7%

Exhibit 1

Page 6

TABULATION OF 414 U. S. FEATURE FILMS SHOWN DURING FIRST TWO YEARS (104 WEEKS) OF HARTFORD PHONEVISION OPERATION
(LISTED IN ORDER OF CUMULATIVE RATING FOR ALL SHOWINGS)

OLDER FEATURE FILMS
(Over 6 Months in Theater Release)

TITLE OF FILM	WEEKS SHOWN	AVERAGE NO. OF SUBSCRIBER HOMES FOR ALL DATES SHOWN	TOTAL NO. OF VIEWING SUBSCRIBERS FOR ALL DATES SHOWN	PERCENTAGE CUMULATIVELY VIEWING ALL SHOWINGS	NO. OF SHOWINGS	AVERAGE PERCENTAGE VIEWING EACH SHOWING
The Country Girl	52	2680	301	11.2%	3	3.7%
Tom Thumb	26	2699	189	11.1%	1	11.1%
3 Shades of Love	42	2118	234	11.0%	3	3.7%
Don't Knock the Twist	32	1853	203	11.0%	2	5.5%
Ada	32	1853	202	10.9%	2	5.5%
Pirates of Blood River	41	2104	227	10.8%	4	2.7%
Heller in Pink Tights	43	2128	230	10.8%	3	3.6%
Murder She Said	34	1924	208	10.8%	3	3.6%
Sins of Rachel Cade	36	2014	212	10.5%	2	5.3%
Man on a String	52	2768	290	10.5%	3	3.5%
Bimbo the Great	31	1825	191	10.5%	2	5.2%
The Miracle	27	1748	181	10.4%	2	5.2%
Two Loves	31	1824	190	10.4%	2	5.2%
Ladies Man	40	2080	214	10.3%	3	3.4%
Black Gold	58	3054	305	10.0%	3	3.3%
Andy Hardy Comes Home	31	1826	178	9.8%	2	4.9%
Atlantis, The Lost Continent	29	1804	177	9.8%	2	4.9%
The League of Gentleman	33	1882	184	9.8%	3	3.3%
Goodbye Again	23	1562	152	9.7%	2	4.9%
The Big Fisherman	26	1686	164	9.7%	1	9.7%
Man from Galveston	95	4760	452	9.5%	4	2.4%
Invasion Quarter	31	1825	172	9.4%	2	4.7%
War Hunt	89	4516	425	9.4%	4	2.4%
Trial and Error	69	3346	315	9.4%	3	3.1%
Blue Hawaii	3	290	27	9.3%	1	9.3%
7 Little Foys	32	1867	172	9.2%	2	4.6%
Scream of Fear	91	4633	417	9.0%	4	2.3%
Ice Palace	28	1785	160	9.0%	2	4.5%
Key Witness	42	2116	186	8.8%	4	2.2%
The Last Time I Saw Archie	94	4749	399	8.4%	3	2.8%
The Green Helmet	27	1742	138	7.9%	2	4.0%
For the First Time	57	3018	236	7.8%	3	2.6%
Chance Meeting	47	2295	180	7.8%	2	3.8%
The Scapegoat	68	3356	258	7.7%	2	3.9%
Man Trap	33	1904	147	7.7%	2	3.8%
Westbound	22	1709	132	7.7%	3	2.6%
Terror of the Tongs	36	2025	155	7.7%	2	3.9%
The Secret Partner	30	1826	139	7.6%	2	3.8%
Wild Westerners	16	1235	94	7.6%	3	2.5%
Two Rode Together	40	2097	158	7.5%	2	3.8%
Take a Giant Step	99	4736	351	7.4%	3	2.5%
Sergeant Rutledge	31	1825	133	7.3%	2	3.6%
St. Louis Blues	21	1510	109	7.2%	1	7.2%
Conquest of Space	42	2116	152	7.2%	2	3.6%
The Matchmaker	38	2029	146	7.2%	2	3.6%
Love ina Goldfish Bowl	60	3122	225	7.2%	3	2.4%
Wild is the Wind	32	1863	132	7.1%	2	3.6%
Foxhole in Cairo	37	2031	143	7.1%	2	3.6%
The Hanging Tree	33	1882	133	7.1%	3	2.4%
Ring of Fire	27	1753	125	7.1%	2	3.6%
A Thunder of Drums	17	1278	89	7.0%	3	2.3%
I Could Go On Singing	72	3404	233	6.8%	4	1.7%
Gideon of Scotland Yard	65	3395	222	6.7%	3	2.2%
The Big Night	39	2053	138	6.7%	3	2.2%
The Happy Thieves	45	2149	135	6.3%	3	2.1%
A Summer to Remember	34	1923	122	6.3%	3	2.1%
Girl of the Night	39	2057	131	6.3%	3	2.1%
As the Sea Rages	35	1968	120	6.1%	2	3.1%
Cash on Demand	29	1815	103	6.0%	2	3.0%
Senior Prom	34	1952	112	5.7%	3	1.9%
The Valiant	98	4743	260	5.5%	3	1.8%
Master of the World	100	4721	261	5.5%	3	1.8%
Song Without End	38	2058	108	5.3%	3	1.8%
The Day They Robbed the Bank of England	49	2348	120	5.1%	2	2.6%
Blueprint for Robbery	40	2078	106	5.1%	3	1.7%
Nights of Lucretia Borgia	38	2037	102	5.0%	2	2.5%
30	41	2098	101	4.8%	3	1.6%
The Would Be Gentleman	35	1967	89	4.5%	4	1.1%
Belle Sommers	33	1888	69	3.7%	2	1.8%
Grand Total (297 Films)			138,480	18.0%	988	5.6%

TABULATION OF 79 LIVE SINGLE-SHOWING SPORTS EVENTS SHOWN DURING FIRST TWO YEARS (104 WEEKS) OF HARTFORD PHONEVISION OPERATION
(LISTED IN CHRONOLOGICAL ORDER OF SHOWING)

	WEEK SHOWN	NO. OF SUBSCRIBER HOMES ON DATES SHOWN	NO. OF VIEWING SUBSCRIBERS ON DATES SHOWN	PERCENTAGE VIEWING
CHAMPIONSHIP BOXING				
Patterson-Liston	13	966	798	82.6%
Fulmer - Tiger	17	1263	358	28.4%
Moore - Clay	20	1441	390	27.1%
Clay - Jones	37	2031	1135	55.9%
Liston - Patterson	56	2998	1961	65.4%
Liston - Clay	87	4388	3637	82.9%
Grand Totals		13087	8279	63.3%
COLLEGE BASKETBALL				
U. of Conn. - Holy Cross	34	1909	222	11.6%
U. of Conn. - Rhode Island	36	2005	311	15.5%
Grand Totals		3914	533	13.6%
HIGH SCHOOL BASKETBALL				
Hartford - Weaver	33	1867	199	10.7%
PROFESSIONAL BASKETBALL				
Exhibition Doubleheader	15	1167	76	6.5%
New York - Los Angeles	16	1247	51	4.1%
New York - Boston	17	1299	69	5.3%
Boston - Los Angeles	19	1403	83	5.9%
Boston - San Francisco	21	1450	88	6.1%
New York - Syracuse	22	1501	56	3.7%
New York - Boston	24	1582	86	5.4%
Boston - Cincinnati	25	1616	81	5.0%
New York - Cincinnati	25	1649	66	4.0%
Boston - New York	26	1686	119	7.1%
New York - Boston	30	1835	170	9.3%
New York - Boston	32	1867	144	7.7%
Boston - Cincinnati	37	2026	212	10.5%
New York - Baltimore	68	3365	129	3.8%
New York - Baltimore	70	3351	98	2.9%
Boston - Cincinnati	71	3403	286	8.4%
New York - Boston	73	3490	229	6.6%
Boston - Los Angeles and San Francisco - New York	74	3545	385	10.9%
Boston - Cincinnati and Baltimore - New York	75	3529	287	8.1%
New York - Boston and Philadelphia - St. Louis	76	3546	237	6.7%
New York - Detroit and Baltimore - Boston	77	3552	232	6.5%
Grand Totals		48109	3184	6.6%
COLLEGE FOOTBALL				
Yale - Cornell	17	1247	91	7.3%
Yale - Dartmouth	19	1358	173	12.7%
Holy Cross - Boston College	23	1534	44	2.9%
Yale - Colgate	70	3351	133	4.0%
Yale - Dartmouth	71	3374	234	6.9%
Grand Totals		10864	675	6.2%

Exhibit 1
Page 8

TABULATION OF 79 LIVE SINGLE-SHOWING SPORTS EVENTS SHOWN DURING FIRST TWO YEARS (104 WEEKS) OF HARTFORD PHONEVISION OPERATION
(LISTED IN CHRONOLOGICAL ORDER OF SHOWING)

PROFESSIONAL HOCKEY	WEEK SHOWN	NO. OF SUBSCRIBER HOMES ON DATES SHOWN	NO. OF VIEWING SUBSCRIBERS ON DATES SHOWN	PERCENTAGE VIEWING
Boston - Montreal	15	1149	77	6.7%
Springfield - Quebec	16	1167	33	2.8%
Boston - Toronto	17	1247	74	6.0%
Boston - Detroit	17	1289	78	6.1%
New York - Chicago	18	1299	75	5.8%
Boston - New York	19	1358	79	5.8%
New York - Toronto	19	1379	74	5.4%
New York - Detroit	20	1403	79	5.6%
New York - Boston	21	1481	99	6.7%
Springfield - Rochester	22	1534	48	3.1%
Boston - Toronto	22	1486	67	4.5%
Springfield - Hershey	23	1534	42	2.7%
Boston - Montreal	23	1534	70	4.6%
Springfield - Quebec	24	1565	49	3.1%
New York - Boston	24	1565	64	4.1%
Boston - Toronto	27	1732	113	6.5%
New York - Montreal	28	1755	129	7.4%
Boston - Toronto	29	1788	110	6.2%
Boston - Toronto	30	1826	110	6.0%
New York - Toronto	34	1909	140	7.3%
New York - Detroit	35	1952	135	6.9%
Boston - Toronto	36	2005	166	8.3%
New York - Toronto	38	2031	132	6.5%
Boston - Chicago	39	2062	110	5.3%
Boston - Montreal	67	3361	179	5.3%
New York - Detroit	68	3365	185	5.5%
New York - Chicago	70	3351	177	5.3%
New York - Toronto	72	3442	189	5.5%
New York - Chicago	75	3514	77	2.2%
Boston - Toronto	77	3547	195	5.5%
New York - Toronto	78	3595	220	6.1%
New York - Detroit	80	3645	94	2.6%
Boston - Toronto	81	3706	197	5.3%
Boston - Montreal	82	3800	235	6.2%
Boston - Toronto	83	3896	231	5.9%
Boston - New York	83	3967	214	5.4%
Boston - Detroit	84	4009	158	3.9%
New York - Montreal	85	4094	163	4.0%
New York - Toronto	86	4195	245	5.8%
New York - Toronto	87	4333	231	5.3%
Boston - New York	87	4410	193	4.4%
Boston - Toronto	88	4387	250	5.7%
New York - Montreal	89	4499	294	6.5%
New York - Toronto	90	4557	261	5.7%
Grand Totals		115723	6141	5.3%
TOTALS - ALL SPORTS EVENTS		193564	19011	9.8%

Exhibit 1
Page 9

TABULATION OF 18 FOREIGN-LANGUAGE FILMS AND 35 SPECIALLY PRODUCED ENTERTAINMENT FEATURES SHOWN DURING THE FIRST TWO YEARS (104 WEEKS) OF HARTFORD PHONEVISION OPERATION
(LISTED IN ORDER OF CUMULATIVE RATING FOR ALL SHOWINGS)

TITLE OF FOREIGN-LANGUAGE FILM (Dubbed in English Dialogue or English sub-titles)	WEEKS SHOWN	AVERAGE NO. OF SUBSCRIBER HOMES FOR ALL DATES SHOWN	TOTAL NO. OF VIEWING SUBSCRIBERS FOR ALL DATES SHOWN	PERCENTAGE CUMULATIVELY VIEWING ALL SHOWINGS	NO. OF SHOWINGS	AVERAGE PERCENTAGE VIEWING EACH SHOWING
Boccaccio '70	100	4724	1564	33.1%	5	6.6%
The Four Days of Naples	60	3120	747	23.9%	3	8.0%
The Bridge	64	3307	706	21.4%	3	7.1%
Sundays and Cybele	61	3197	517	16.2%	3	5.4%
Any Number Can Win	99	4745	601	12.7%	4	3.2%
Square of Violence	71	3371	427	12.7%	3	4.2%
Stowaway in the Sky	73	3485	390	11.2%	3	3.7%
The Letter That Was Never Sent	81	3689	368	10.0%	3	3.3%
Cinderella	72	3418	336	9.8%	3	3.3%
Hand in the Trap	87	4236	348	8.2%	4	2.1%
The Counterfeiters of Paris	65	3347	191	5.7%	3	1.9%
Two Daughters	83	3837	208	5.4%	4	1.4%
Sound of Trumpets	85	4056	216	5.3%	4	1.3%
The Little Humpbacked Horse	75	3527	163	4.6%	3	1.5%
Lady with the Dog	95	4759	133	2.8%	3	0.9%
Marriage of Figaro	87	4478	88	2.2%	4	0.6%
The Music Room	97	4735	81	1.7%	3	0.6%
Morning Star	85	4112	66	1.6%	3	0.5%
TOTAL (18 films)			7160	10.1%	61	3.0%
TITLE OF SPECIALLY PRODUCED ENTERTAINMENT FEATURE						
The Kingston Trio	11 & 30	1242	535	43.0%	5	8.6%
American Pageant of Arts	22	1525	446	29.3%	1	29.3%
Best of the Bolshoi	5	492	140	28.4%	1	28.4%
Wake Up Darling	59 & 83	3451	650	18.9%	5	3.8%
Show Girl	104	4777	893	18.7%	5	3.7%
An Evening with Joan Baez	63 & 86	3535	594	16.9%	4	4.2%
Eddie Fisher in Las Vegas	58 & 67	3167	509	16.1%	3	5.4%
Ice Chips	40	2068	302	14.6%	2	7.3%
Tchin-Tchin	77 & 99	4019	553	13.8%	5	2.8%
A Party	20 & 39	1674	229	13.7%	2	6.9%
The Collegiate Sound	35 & 48	2118	256	12.1%	2	6.0%
McGuire Sisters	26 & 42	1915	187	9.8%	4	2.4%
Hildegarde	17 & 34	1434	139	9.6%	4	2.4%
Streets of New York	78	3616	327	9.0%	3	3.0%
Upstairs at the Downstairs	25	1753	173	8.8%	2	4.1%
A Country Scandal	44	2185	174	8.2%	2	2.7%
The Ransom of Red Chief	92	4649	379	8.2%	3	2.6%
Spoon River	82 & 94	4088	314	7.7%	5	1.9%
Evening with Carlos Montoya	28 & 66	2595	195	7.6%	4	2.4%
The Limeliters	68	3359	246	7.3%	3	3.5%
Fields & Holloway	37	3538	250	7.1%	2	3.8%
The Consul	32 & 69	2892	184	7.1%	2	3.1%
Carol Lawrence at the Plaza	76	2029	126	6.2%	2	3.1%
Bayanihan Philippine Dancers	25 & 46	1917	97	5.1%	2	1.3%
The Amorous Flea	102	4792	220	4.6%	3	1.5%
Hedda Gabbler	53	2783	123	4.4%	3	2.2%
The Affair	80	3650	141	3.9%	3	1.3%
Androcles and the Lion	78	3630	127	3.5%	3	1.2%
Ole! Ole!	90	4586	130	2.8%	3	0.9%
Personal Appearance - Kimbrough	50	2300	63	2.6%	1	2.6%
The Father	84	4049	95	2.3%	3	0.8%
Piano Recital - Lateiner	32	1824	40	2.2%	1	2.2%
Personal Appearance - Buchwald	52	2619	41	1.6%	1	1.6%
Personal Appearance - Middleton	51	2489	22	0.9%	1	0.9%
Joan Sutherland	53	2783	46	1.7%	2	0.8%
TOTAL (35 features)			9196	8.7%	97	3.1%

Exhibit 1
Page 10

TABULATION OF 53 EDUCATIONAL FEATURES (INCLUDING 3 FOR DOCTORS ONLY)
SHOWN DURING FIRST TWO YEARS (104 WEEKS) OF HARTFORD PHONEVISION OPERATION
(LISTED IN CHRONOLOGICAL ORDER OF FIRST SHOWING)

PROGRAM TITLE	WEEKS SHOWN	AVERAGE NO. OF SUBSCRIBER HOMES FOR ALL DATES SHOWN	TOTAL NO. OF VIEWING SUBSCRIBERS FOR ALL DATES SHOWN	PERCENTAGE CUMULATIVELY VIEWING ALL SHOWINGS	NO. OF SHOWINGS	AVERAGE PERCENTAGE VIEWING EACH SHOWING
American Adventure	1	172	5	2.9%	1	2.9%
Woodrow Wilson	3	290	13	4.5%	1	4.5%
Social Class and Specialization	4	365	13	3.6%	1	3.6%
Changing Family Life	7	574	21	3.7%	1	3.7%
He Acts His Age	12 & 29	1324	105	8.0%	2	4.0%
Terrible 2's and Trusting 3's	13 & 30	1394	83	6.0%	2	3.0%
Frustrating 4's and Fascinating 5's	14 & 31	1417	54	3.8%	2	1.9%
Sociable 6's to Noisy 9's	15 & 32	1459	37	2.6%	2	1.3%
From 10 to 12	16 & 33	1531	32	2.1%	2	1.0%
The Teens	17 & 34	1588	46	2.8%	2	1.4%
The Highwayman	18	1335	12	0.9%	1	0.9%
What Kind of Government Have We	18	1308	3	0.2%	1	0.2%
A President's Power Contested	19	1363	4	0.2%	1	0.2%
Artisians of Florence	19	1379	4	0.3%	1	0.3%
Founding Fathers Not Forseen	20	1407	1	0.1%	1	0.1%
Above the Timberline	20	1433	16	1.1%	1	1.1%
The Changing Forest	21	1481	12	0.8%	1	0.8%
Presidential Leadership	21	1458	0	----	1	----
The Spruce Bog	22	1510	16	1.1%	1	1.1%
A President Negotiates	22	1493	6	0.4%	1	0.4%
The Presidential Office	23	1541	1	0.1%	1	0.1%
World in a Marsh	23	1552	18	1.2%	1	1.2%
A Citizen Makes a Decision	24	1599	5	0.3%	1	0.3%
The President and Congress	24	1572	3	0.2%	1	0.2%
A Citizen Participates	25	1657	5	0.3%	1	0.3%
A Law is Made	25	1632	1	0.1%	1	0.1%
Functions of Congress	26	1699	2	0.1%	1	0.1%
A Day of Thanksgiving	26	1699	4	0.2%	1	0.2%
Meet Your Federal Government	27	1740	5	0.3%	1	0.3%
Black and White in S. Africa	28	1754	13	0.7%	1	0.7%
Japanese Family	28	1773	28	1.6%	1	1.6%
Peoples of the Soviet Union	29	1819	28	1.5%	1	1.5%
Air Age	30	1828	34	1.9%	1	1.9%
Can It Hold Together	31	1824	6	0.3%	1	0.3%
Colonialisms - Ogre or Angel	32	1839	6	0.3%	1	0.3%
The Colonies Look Ahead	33	1884	7	0.4%	1	0.4%
Crisis in Asia	34	1938	9	0.5%	1	0.5%
World of the Arts - Music	75 & 76	3527	25	0.7%	2	0.4%
World of the Arts - Arts	77	3551	10	0.3%	1	0.3%
World of the Arts - Arts	78	3615	10	0.3%	1	0.3%
World of the Arts - Film	79	3640	11	0.3%	1	0.3%
World of the Arts - Theater	80	3657	5	0.1%	1	0.1%
Planning for Spending	93	4705	25	0.6%	1	0.6%
Getting the Most For Your Dollar	94	4738	25	0.5%	1	0.5%
When, How and How Much Should You Borrow?	95	4757	18	0.4%	1	0.4%
Solving Your Housing Problem	96	4767	7	0.2%	1	0.2%
Protecting Your Income Through Insurance	97	4739	16	0.3%	1	0.3%
Investing Through Stocks and Other Securities	98	4740	15	0.3%	1	0.3%
Planning for Your Estate	99	4747	11	0.2%	1	0.2%
You and the Economy	100	4717	1	----	1	----
Grand Totals (50 programs)			838	0.8%	57	0.7%
FOR DOCTORS ONLY						
Hyperbaric Oxygen and its Applications, Emotional Problems as Viewed by the Internist, and The Surgical Correction of Cardiac Anomalies	99	100	32	32.0%	2	16.0%
Hypernephroma, the Internist's Tumor and other Practical Clinics	100	100	10	10.0%	2	5.0%
Emergency Resuscitation, Emergency Tracheotomy and Psychiatric Disorders As Seen by the Internist	101	100	14	14.0%	2	7.0%
Grand Totals (3 programs)			56	18.7%	6	9.3%

EXHIBIT 2

NUMBER OF CURRENT SUBSCRIBERS WITHIN EACH BRACKET OF AVERAGE WEEKLY PROGRAM EXPENDITURES FOR 1ST 92 WEEKS OF HARTFORD PHONEVISION OPERATION

Average Weekly Program Expenditure	NUMBER OF SUBSCRIBERS — INCOME LEVELS				
	0 - $3,999	$4,000 - $6,999	$7,000 - $9,999	Over $10,000	TOTAL
0	10	94	43	8	155
$.01 - $.10		4	3		7
.11 - .20	1	15	14	7	37
.21 - .30	2	23	28	9	62
.31 - .40	4	40	41	22	107
.41 - .50	4	58	63	27	152
.51 - .60	2	62	80	29	173
.61 - .70	4	63	92	33	192
.71 - .80	2	73	112	50	237
.81 - .90	4	105	97	40	246
.91 - 1.00	1	93	135	56	285
1.01 - 1.10	5	82	130	44	261
1.11 - 1.20	3	93	109	44	249
1.21 - 1.30	1	97	108	44	250
1.31 - 1.40	5	90	112	32	239
1.41 - 1.50	3	93	104	37	237
1.51 - 1.60	2	88	80	27	197
1.61 - 1.70	3	65	70	23	161
1.71 - 1.80	2	86	75	23	186
1.81 - 1.90		69	64	18	151
1.91 - 2.00	1	58	64	13	136
2.01 - 2.10	5	44	50	7	106
2.11 - 2.20	2	47	48	10	107
2.21 - 2.30	1	48	46	7	102
2.31 - 2.40	1	36	34	8	79
2.41 - 2.50		43	34	14	91
2.51 - 2.60	1	29	26	7	63
2.61 - 2.70		23	17	2	42
2.71 - 2.80		21	16	4	41
2.81 - 2.90		18	18	2	38
2.91 - 3.00		15	15	6	36
3.01 - 3.10		8	9	2	19
3.11 - 3.20		8	10	2	20
3.21 - 3.30		20	8	2	30
3.31 - 3.40		10	3		13
3.41 - 3.50	1	15	6	1	23
3.51 - 3.60		6	3		9
3.61 - 3.70		8	5	3	16
3.71 - 3.80		3	2	1	6
3.81 - 3.90		1	4		5
3.91 - 4.00		4	2	1	7
4.01 and over		34	25	1	60
TOTALS	70	1,892	2,005	666	4,633

EXHIBIT 3

AVERAGE PROGRAM VIEWING*

		Average Number of Subscribers	Total Program Viewing	Average Program Viewing Per Subscriber	
				Month	Annual Rate
July	1962	304	$ 2,098.00	$6.90	$82.82
August		612	3,325.25	5.43	65.20
September		855	6,932.25	8.11	97.29
October		1,190	7,276.25	6.11	73.37
November		1,436	8,835.50	6.15	73.83
December		1,631	9,399.00	5.76	69.15
January	1963	1,799	10,255.00	5.70	68.40
February		1,900	9,435.50	4.97	59.59
March		2,039	11,434.75	5.61	67.30
April		2,110	7,904.25	3.75	44.95
May		2,217	10,624.25	4.79	57.51
June		2,516	10,538.00	4.19	50.26
July		2,920	17,342.00	5.94	71.27
August		3,125	14,299.75	4.58	54.91
September		3,283	14,788.25	4.50	54.05
October		3,356	12,476.75	3.72	44.61
November		3,460	11,558.50	3.34	40.02
December		3,573	15,039.75	4.21	50.51
January	1964	3,784	18,303.25	4.84	58.04
February		4,209	33,622.00	7.99	95.86
March		4,566	21,653.25	4.74	56.91
April		4,738	22,264.00	4.70	56.39
May		4,734	21,098.50	4.46	53.48
June		4,775	18,255.25	3.82	45.88
Average Annual Rate					62.15
Average Weekly Rate					1.20

*Exclusive of certain discounts to be discontinued in future operations.

EXHIBIT 4

TOP 100 MARKETS FOR 1964
RATED BY NUMBER OF TELEVISION HOMES

		TV Homes
1	New York	5,620,800
2	Los Angeles	2,829,600
3	Chicago	2,342,300
4	Philadelphia	2,125,800
5	Boston-Manchester	1,831,700
6	Detroit	1,634,500
7	San Francisco-Oakland	1,448,900
8	Cleveland	1,324,200
9	Pittsburgh	1,257,600
10	Washington	934,000
11	St. Louis	867,700
12	Providence	867,300
13	Baltimore	806,900
14	Dallas-Ft. Worth	783,600
15	Cincinnati	765,900
16	Minneapolis-St. Paul	764,700
17	New Haven-Hartford-New Britain	740,400
18	Indianapolis-Bloomington	701,000
19	Miami	689,800
20	Milwaukee	658,700
21	Kansas City	621,500
22	Charlotte, N. C.	618,700
23	Sacramento-Stockton	616,000
24	Atlanta	605,100
25	Seattle-Tacoma	604,700
26	Buffalo	589,700
27	Johnstown-Altoona	582,200
28	Lancaster Harrisburg-York-Lebanon	577,500
29	Grand Rapids-Kalamazoo	564,900
30	Houston	530,800
31	Dayton	513,600
32	Tampa-St. Petersburg	506,300
33	Memphis	501,400
34	Columbus, Ohio	492,900
35	Portland, Ore.	481,600
36	Syracuse-Elmira	470,300
37	Steubenville, Ohio-Wheeling, W. Va.	453,200
38	Greenville-Spartanburg-Asheville	451,600
39	Nashville	450,700
40	Birmingham	447,200
41	New Orleans	446,400
42	Albany-Schenectady-Troy	430,200
43	Charleston-Huntington	430,100
44	Louisville	427,000
45	Flint-Saginaw-Bay City	402,000
46	Greensboro-Winston-Salem-High Point	400,900
47	Toledo	397,200
48	Denver	388,700
49	Portland-Poland Spring	378,600

	TV Homes
50 Lansing-Onondaga	374,500
51 Durham-Raleigh	358,800
52 Wichita-Hutchinson	356,500
53 Oklahoma City	353,000
54 San Diego	352,800
55 San Antonio	352,600
56 Orlando-Daytona Beach	343,800
57 San Jose-Salinas-Monterey	337,000
58 Davenport-Rock Island-Moline	335,100
59 Rochester	333,300
60 Champaign-Springfield-Decatur	330,500
61 Tulsa	330,400
62 Roanoke-Lynchburg	329,600
63 Omaha	328,300
64 Norfolk	315,900
65 Green Bay	314,600
66 Richmond	311,400
67 Cedar Rapids-Waterloo	308,900
68 Shreveport-Texarkana	300,900
69 Baton Rouge	295,500
70 Scranton-Wilkes-Barre	292,900
71 Des Moines-Ames	287,500
72 Salt Lake City	282,600
73 Jackson, Miss.	276,100
74 Jacksonville	275,500
75 Spokane	267,800
76 Phoenix	265,800
77 Mobile-Pensacola	264,900
78 Madison	252,600
79 Knoxville	249,500
80 Little Rock	240,000
81 Cape Girardeau, Mo.-Paducah, Ky.-Harrisburg, Ill.	239,600
82 Binghamton	237,700
83 Columbus, Ga.	234,700
84 Columbia, S. C.	230,700
85 Sioux Falls, S. D.	225,600
86 Greenville-Washington-New Bern, N. C.	222,900
87 Evansville, Ind.-Henderson, Ky.	218,200
88 Rockford, Ill.	214,200
89 Chattanooga	212,100
90 Lincoln-Kearney-Hastings-North Platte	209,300
91 Augusta, Ga.	203,500
92 Fresno	194,500
93 Bristol, Va.-Johnson City-Kingsport, Tenn.	191,800
94 Tallahassee, Fla.-Thomasville, Ga.	187,000
95 Terre Haute	184,400
96 Springfield-Holyoke	183,600
97 Austin-Rochester, Minn.-Mason City, Iowa	183,300
98 Youngstown, Ohio	178,000
99 Erie, Pa.	174,100
100 Albuquerque	171,600

Source: *Television Magazine,* Vol. XXI, No. 3, March 1964, p. 66.

EXHIBIT 5

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

Docket No. 11279

In the Matter of

Amendment of Part 3 of the Commission's Rules and Regulations (Radio Broadcast Services) to Provide for Subscription Television Service

Notice of Proposed Rule Making

1. Notice is hereby given of rule making in the above-captioned matter. The text of the proposed rules is set forth as an Appendix to this Notice.

General

2. The Commission originally issued a Notice of Proposed Rule Making in this proceeding on February 10, 1955, in which it invited comments on questions of fact, law and public interest concerning the authorization of subscription television. Voluminous comments were submitted by members of the television industry, motion picture interests and others. As a result of these proceedings, the Commission concluded that it had the requisite statutory authority to authorize the use of broadcast frequencies for subscription operations if it should find that it would be in the public interest to do so. It reserved its ultimate judgment, however, as to whether the public interest would be served by the definitive establishment of a nationwide subscription television service until suitable trial demonstrations of subscription television could be held, in order to obtain more useful information concerning what subscription television could offer, how the public would respond to what is offered and how the service would operate in practice. The Commission, in its First Report,[1] as amended by its Third Report,[2] announced that it would accept applications for three-year trial subscription operations pursuant to certain conditions set forth in such Reports.

3. We provided that the present proceeding would remain pending on the issue of whether subscription television service should be au-

[1] 16 RR 1509 (1957).

[2] 16 RR 1540a (1959).

thorized on an extended or continuing basis until additional data was available from such trial subscription television operations as might be authorized pursuant to the First and Third Reports. Recent developments, such as the growth of wire subscription television, CATV systems and the fact that the RKO Phonevision subscription operation in Hartford, Connecticut, is now in its third year of its trial operation, in our opinion, make it desirable to now give further consideration to authorizing subscription television on an extended nation-wide basis.

4. *The Hartford Trial.* On June 22, 1960, RKO Phonevision Company (then known as Hartford Phonevision Company) and RKO General, Inc., its parent company, pursuant to the terms of the Third Report, applied for authorization to conduct subscription television operations over television station WHCT, Hartford, Connecticut, using the Zenith Phonevision system. After hearings held before the Commission, *en banc,* the Commission reached its final decision on February 23, 1961, in which it unanimously concluded that the grant of RKO's application would fulfill the objectives of the trial subscription television operations set forth in the First and Third Reports. The United States Court of Appeals for the District of Columbia thereafter affirmed the Commission's authorization of the Hartford trial.[3] Actual subscription operations by WHCT, Hartford, were commenced on June 29, 1962. Since that time the Commission has been kept fully informed concerning the operation of the Hartford trial and has had access to all pertinent operational data concerning this trial.[4]

5. *The Zenith-Teco Petition.* Zenith Radio Corporation has been one of the progenitors of subscription television proposals before the Commission. The instant proceeding had its genesis in a petition filed by Zenith on February 25, 1952, as revised by a joint petition filed by Zenith and Teco, Inc., on November 29, 1954. Zenith Phonevision equipment is being utilized by WHCT in the Hartford subscription trial. In 1965, Zenith and Teco filed a further joint petition requesting the Commission to adopt appropriate rules authorizing subscription television service on an extended nation-wide basis. The petition states that after approximately two years of operation the Hart-

[3] *Connecticut Committee Against Pay TV* v. *FCC,* 301 F.2d 835 (D.C. Cir.), cert. denied, 371 U.S. 816 (1962).

[4] The only other subscription trial authorized by the Commission was granted to Channel Two Corporation (KCTO, Denver) on October 3, 1962. KCTO subsequently abandoned its plans for this trial.

ford trial has now reached a stage where it has supplied meaningful data and information. It is alleged that the operational data and information so far produced by the Hartford trial give the Commission for the first time a factual basis for appraising the potentials of the service in other types of circumstances.

6. Available data from the Hartford trial include the technical performance of the Phonevision subscription equipment, the modus operandi of subscription service, methods to be employed, the nature of the programs offered and the role of the participating broadcast station licensee, which were factors which the Commission indicated in its Third Report it hoped would be demonstrated and clarified by a trial operation. Zenith and Teco contend that the Hartford trial has proven that subscription programs may be provided to the public which supplement rather than duplicate conventional television programming; that the public will respond to and support such subscription programming; and that subscription television offers a potential source of revenue which would increase the number of broadcast services now available to the public, in furtherance of the achievement of the Commission's television service priorities as established in its Sixth Report and Order. The petition further asserts that, in view of the growth of unregulated wire television, the use of CATV for pay television purposes, the Commission's continuing problem of UHF development and related problems of increasing the number of stations and the amount of program service available to the public, the time has come for further consideration by the Commission. Without here attempting to reach a final conclusion on all of the contentions advanced by Zenith and Teco in their petition, we have concluded that changed circumstances and new facts now available since our Third Report was issued in 1959 warrant a further appraisal of subscription television.

7. *Preliminary Legal Considerations.* In our First Report, as readopted and reaffirmed in the Third Report, we concluded that we have the statutory authority to authorize subscription television operations if we find that such operations would be in the public interest. Our conclusion in this respect is supported by the Court's affirmation of our power to authorize the Hartford trial, wherein the Court explicitly rejected arguments "that the Commission lacks statutory power to authorize a television broadcast system which requires the direct payment of fees by the public."[5]

---

[5] *Connecticut Committee Against Pay TV* v. *FCC,* 301 F.2d 835, 837 (D.C. Cir.), cert. denied, 371 U.S. 816 (1962).

8. In our previous reports we also explicitly rejected arguments that the definition of "broadcasting" in Section 3(o) of the Communications Act, *per se,* bars the authorization of subscription broadcasting, stating: "The evident intention of any station transmitting subscription programs would be to make them available to all members of the public within the range of the station."[6] (First Report, para. 28.) However, we reserved the question of whether subscription television should be classified as "broadcasting" or should be classified under some entirely new service classification until trial experience would furnish a better basis upon which we might determine the answer to this question. (First Report, para. 43.) Information available to us from the Hartford trial lends support to our previous conclusion that subscription television should be classified as "broadcasting" within the meaning of Section 3(o) of the Act. The Hartford trial has not only demonstrated that the subscription television station operator intends to make subscription programs available to all members of the public desiring them, but it has further demonstrated that a broadcast licensee carrying subscription programs will have no more difficulty in complying with all pertinent requirements of the Communications Act and those provisions of the Commission's Rules and Regulations applicable to television broadcasting than a station broadcasting non-subscription programs. Thus, the proposed rule contemplates that subscription operations will be generally classified as "broadcasting" within the meaning of Section 3(o) of the Act. Comments on the proposed rule may also be directed to our proposal to so classify subscription television operations.

9. *Scope.* It should be emphasized that the proposed rule which would permit subscription operations on an extended nation-wide basis does not, without more, automatically authorize all television stations to broadcast subscription programs. Rather, the proposed rule requires any television station desiring to broadcast subscription programs to first file with the Commission an application for subscription television authorization. The grant or denial of individual applications for subscription television authorization will be decided on a case-to-case basis in light of the public interest considerations which may be involved in the particular circumstances. We believe that such a case-to-case approach under the rule will provide a flexibility which will better serve the ultimate public interest than would an

[6] We also concluded that "there would appear to be little basis for classifying the proposed kind of service as a common carrier service within the meaning of Section 3(h)." (First Report, para. 43.)

86-399 O - 67 - 22

approach whereby we attempted by rule to restrict subscription operations to a particular type of station or to particular markets.

Discussion of Specific Provisions

10. *Section 73.641.* This section contains definitions of the terms used throughout the proposed rules.

11. *Section 73.642.* This section covers the filing of applications for subscription television authorizations and the procedures which will be followed by the Commission in determining whether such application should be granted or denied.

12. *Section 73.643.* This section sets forth certain licensing policies which will be applied by the Commission in granting subscription television authorizations. These policies are designed primarily for the purpose of making certain that the television station broadcasting subscription programs will retain ultimate control over its operations in a manner which will at all times permit it to fulfill its duties and responsibilities to broadcast in the public interest and to prevent monopolistic growth of subscription television in the fields of station operation and program distribution.

13. *Section 73.644.* This section provides that no commercial advertising announcements shall be carried during subscription broadcasts. It also provides that charges, terms and conditions of service to subscribers shall be applied uniformly; provided, however, that subscribers may be divided into reasonable classifications and that different conditions may be applied to subscribers in different classifications. It further provides that television stations authorized to broadcast subscription programs shall also broadcast conventional programs. This section also establishes the procedures which may be followed by the manufacturers of subscription television equipment in obtaining advance type approval and type acceptance of their equipment.

14. *Comments.* Pursuant to the procedures set forth in Section 1.415 of the Rules and Regulations, interested parties may file comments on or before ....., 1965, and reply comments on or before ....., 1965. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other

relevant information before it in addition to the specific comments invited by this Notice.

15. As we noted in our First Report, previous comments filed in this proceeding offered no fixed guideposts either in past experience or in crystalized future plans, and previous debate therefore was necessarily conducted more on the grounds of potential implications of subscription service than on the basis of demonstrable facts. We believe that since reaching that conclusion in 1957, there are a number of demonstrable facts available, such as the development and growth of wire subscription television service, CATV, and, of course, facts developed during the Hartford trial. Thus, the Commission will expect parties filing comments to make use of such facts to the extent possible. Naked assertions unsupported by facts are of little help to the Commission in reaching a decision. We, of course, recognize that any appraisal of subscription television must necessarily be predicated in part upon future estimates and projections as well as present facts, since it is keyed to future public interest goals. However, if such projections are to be of help to the Commission, they should be predicated upon methods of economic and market analysis which are within the realm of rational deduction and inference.

16. Further, in our First and Third Reports we outlined what we believed to be the central issues concerning whether subscription television should be authorized on a nation-wide basis. In summary these issues were (a) whether subscription television would provide a beneficial supplement to the program choices now available to the public; (b) whether subscription television would result in an increase of resources which would facilitate significant increases in the number of services available to the public under the present system; and (c) whether subscription television would seriously impair the capacity of the present system to continue to provide advertising-financed programming of the present or foreseeable quantity or quality, free of direct charge to the public. We are still of the opinion that these are the central issues to which comments should be directed.

17. Authority for the amendments proposed herein is contained in Sections 3(o), 4(i), 301, 303(b), 303(e), 303(g), 307 and 309 of the Communications Act of 1934, as amended.

18. In accordance with the provisions of Section 1.419 of the Rules and Regulations, an original and 14 copies of all comments, replies, pleadings, briefs or other documents filed in this proceeding shall be furnished the Commission.

Mr. WRIGHT. Now, this is the box that we currently put on the subscriber's set in Hartford. This is the program book that is sent to the subscriber. Anyone within the range of channel 18, a UHF station in Hartford, can subscribe. When he subscribes, this box is placed on his set.

You will notice in examining this program booklet which I would like to pass up to you, if you will turn to the back of the program book you will notice that channel 18 broadcasts for anywhere from 3 to 5 hours of every day of normal ordinary television programs. You will notice from a list of them, the Merv Griffin Show; Notre Dame Football Highlights; Afternoon News Report; Forecast with Chris Rydel; World with Ray Somers; and Willie Pep, and so forth.

If you will run down this, you will see the TV programing much resembles the programing generally that you will find in any station in the area.

In addition to the programs that are normal advertising supported programs, there are subscription programs. You will notice that one of the subscription programs in that particular week is "In the Heat of the Night." As a matter of fact, it is on the cover. This is the current booklet. "In the Heat of the Night" is one of the greatest box office attractions that is playing in the theaters right now. As a matter of fact, it is playing here in Washington.

Here are some pictures taken outside of RKO Keith's Theater just the other day showing lines of people who are waiting to get into this theater at $3 a seat to see this picture. In Hartford, this picture is on subscription TV on channel 18 for a dollar and a half a family, and you can have your friends in, too. There is no restriction about that.

So, this is really what we are talking about. We are talking about a new electronic development in the distribution of box office entertainment that makes it technically possible to bring this kind of thing that the networks can't buy and won't be able to buy for several years to show on television, free television.

By the way, I wince every time I hear that statement "free television." Mr. Preminger yesterday told this committee that "commercials" were so good because they cost $25,000 to $30,000 to produce but he didn't tell all the story. We are one of the big TV advertisers in this country and we pay from $60,000 to $70,000 a minute to run one of those $25,000 to $35,000 commercials, for just 60 seconds.

Furthermore, usually about April or May of every year, I am sitting in my office and our advertising sales department comes in and they say, "Our agency tells us that if we don't commit by tomorrow morning at 9 o'clock for $10 million of commercials, four on 'Saturday at the Movies,' and two on the 'Jerry Lewis Show' and two on some new show we never heard of and four on something else, that we may not be on television this fall."

Mr. VAN DEERLIN. You are talking to men who advertise every 2 years and in addition to these disadvantages must put up cash in advance.

Mr. WRIGHT. I am sure we have a lot of the same problems, Mr. Van Deerlin.

You mentioned that you have to go to your voters next year. We have to go to our voters who are our customers every day with our

products. We have a lot of people who are sitting around trying to design a new radio or new television set and we have some new ideas, maybe for a space command or remote control or for a new kind of tape recorder or something.

We will go into an analysis of the problems that are involved in getting in the market and what we will be faced with and how much it will cost us and how long it will take us to do it and what it will sell for and whether the public will buy it. Then we have a hard decision as to whether we are willing to spend that money and take a chance. When we do, we have to go out and have an election with that new product. We have a new product usually every May and we have a new product line every December.

We bring all our distributors in from Boston, San Diego, Denver, all over the country, and we show them that new line, what we have been working on for 2 or 3 years. They are usually enthusiastic. It is easy to get them to be enthusiastic about something. Then they go out and show it to the dealers. These dealers, of course, are also being worked on by Motorola, Radio Corp., and General Electric and the Japanese people and everybody else.

Some of those models that we make are a real smash and we have done a great job and everybody is happy and some of them are dogs and we have to spend a couple of years in disposing of them.

But you know this competitive system is a wonderful thing, really. We wouldn't have it any other way. It keeps us on our toes. It keeps us working hard. It has brought the price of our merchandise down in a descending curve, and it is better merchandise, because we are in one of the most highly competitive businesses that there is in this country.

Really, this is what is so frustrating to us about subscription television. We worked on something and made a substantial investment in it because we thought we had a way of bringing a new product, a new service, to the country, that would sell. It would be something that they would want. Ordinarily with that sort of thing we would just go ahead and spend our money and do it and that is what I wanted to do on this. But our lawyers prevailed on me that maybe we had better not do that, that the Federal Communications Commission will be very upset if you do that. So, let us go down and ask them for permission to expand this service.

Well, it really hit the fan at that time. I had no idea that the three networks would spend the amount of time and the amount of effort in trying to kill this thing off that they have. We certainly expected that the theaters would. This is a direct competition with them and we knew they would fight it.

But the whole sum and substance of the opposition to our having a chance to introduce this new service is that the networks say that "If it is approved, it will be so popular, it will be so much better than anything we have got, that it will give these people so much money that they can go out and outbid us and take every good program we have off the air, so we are going to have to close our doors."

Now, this is the basic question, really. This is the one thing that stops people about subscription television. I am sure all of you are in agreement that the congressional policy and the national policy ought to be to encourage more and better programing on television and more

and better things that the public want. Right now, the commercial television has a revenue of around $3 billion.

Walter Scott, chairman of NBC, predicted just the other day that within 10 years that is going to increase to $6½ billion.

Now, incidentally, more than 50 percent of that current $3 billion is accounted for by the networks, themselves, in their O. & O. stations.

Now, we are starting out in Hartford and we have about 5,000 to 7,000 subscribers. Let us assume now that the Commission lets us go ahead with this thing and issues an order tomorrow to say that we can go ahead with it. It is going to take us at least 2 or 3 years to get started in a major city in terms of having anything like 10 percent of penetration.

There are only 29 cities under the Commission's present order that we could operate in, in the first place, which have five stations that would make this possible. Before we would have the kind of money that would make it possible for us to even talk about taking programs like "Petticoat Junction" and "Ed, the Talking Horse," away from the networks, we would be down the road 3 or 4 years.

Now, I want to assure this committee and I want to say this as loud and as long as I can, we have no intention of trying to arrogate to ourselves the existing programs of the networks. As long as we have anything to do with it, we will have nothing to do with the world's series; we will have nothing to do with the Rose Bowl games. We will have nothing to do with the "Ed Sullivan Show" or with "Bonanza" or with "I Spy" or with "Peyton Place" or any of these other shows.

I assure you this is not the area in which we want to operate. This is not the area where people can build up a business by bringing to the public things for which they will pay. These things are not box office. These things are built in and ingrained into free television and we don't want to touch them.

Now, they will probably tell you that these rules that the Commission has suggested are outrageous, that either they are unconstitutional or that they won't be effective. I cannot say that I care too much for those rules, either. But we are perfectly willing to accept the proposition that this Congress and the FCC acting under the Communications Act has a perfect right to take whatever regulatory steps are necessary to make sure that what we say the service should be is the way it actually is. And if these rules aren't effective in keeping this within bounds, then you certainly have the power to suggest and make any other rules that will.

Now, I cannot understand the networks' theory that we are going to wreck the system because it presupposes, first of all, that we are a bunch of crooks who want to go out and gouge the public and deceive them. Believe me, General Tire Co., who started out the same way as Zenith did, as a small tireshop some 50 years ago, and Zenith have not made their business this way. The whole key to our business is to bring something to the public that enhances our image and that the public is willing to pay for in competition with the other things that are available.

Other companies that have affiliated with us, at least in preliminary arrangements to go forward with this thing are Kaiser Aluminum on the west coast and Field Enterprises in Chicago. It is unthinkable that we would be engaged in a gigantic conspiracy here to deprive the public of free television.

The second thing that it presupposes is that their product is so bad that people are going to watch subscription TV and not watch the networks at all to the point where they are powerless.

Now, I know David Sarnoff very well and I know William Paley and I know Leonard Goldenson. We have had a lot of competitive go-arounds with these people and I have the lumps to prove it, too. If you think that they are going to sit around and let us take their audience and take over this medium, this is the most ridiculous suggestion I have ever heard.

I know what they are going to do. They are going to throw against subscription the best programs that they can possibly get and if it means losing money for the whole network for a year, if it could put us out of business and keep up from getting going on this thing, I am sure they would be very well tempted to do it.

Now, if we lose that kind of competitive battle, we certainly have no quarrel at all. This is perfectly all right. This is the good old American way. If they can do such a good job with the network programing that nobody is going to watch subscription TV and we can't get the kind of programs that people pay for, enough to support the thing, fine; we are wrong. We have been wrong before about products and we probably will be in the future. That is perfectly all right. But then it also presupposes that, in addition to these other things happening, this committee and the FCC are just going to sit here and let it happen. I think that is insulting. It insults this committee and it insults the FCC. You obviously have the jurisdiction to see to it that these bad things do not happen.

Now, there is one other matter tha I would like o emphasize, this question of jurisdiction. You gentlemen have raised the point that the FCC acted here without coming to Congress and that there was in the past some committee resolution that requested them to hold up action on a regular basis on this matter until Congress had a chance to act on it.

In 1952 when this matter first came up, I was assistant general counsel of Zenith and had occasion to go into the legal aspects of it. I am no communications lawyer but we consulted three top law firms who are real experts in this matter as to what was the Commission's jurisdictional basis for handling this thing. Should we go to Congress and ask for an amendment of the law or should we go to the Commission and ask for authorization?

In every case, counsel advised us that while there were arguments both ways, there was no question in their mind that the Commission had authority under existing law to authorize this service, that under the way we had proposed it, it was broadcasting and under their powers to encourage new use of radio and to classify different services and to make whatever regulations they needed to make, that they had the power to do this.

So, we proceeded on that basis. Now, it is possible that the lawyers are wrong on that matter. If the FCC should issue such an order there is no question but what it would be appealed in the court of appeals and probably the issue would finally be determined in the Supreme Court of the United States, whether under the existing act this is a broadcast service that the Commission has the right to authorize.

May I say that should it happen that way, we will then be in a situation where if the Court should turn us down, then obviously we

would have to come back to this Congress for legislation on the matter. If, on the other hand, the Court should say that the Commission did have jurisdiction in this thing and this was a proper service, this could only happen at the earliest, I would say, a year from now if the Commission should act next week on this matter.

In the meantime, this service could hardly have gotten started, even in one city. There would be every opportunity for this Congress and for this committee, if they wanted to intervene, to take the matter up and to either suggest amendments to the act that would provide a proper regulation as to whatever proper regulation Congress thought necessary or even prohibit it altogether if it should be determined in actual use of the system that it was against the public interest.

But I do not see, really, how this can happen if we are talking about the public interest. If this is not something that the public really wants, it is going to fall on its face. You gentlemen don't have to do a thing about it nor does the FCC. This will be completely aborted unless the public really wants it.

Now, if the public really wants it to any large extent, isn't that the argument that the public should have it provided that it can be regulated so that it keeps in its proper place in the spectrum of communication?

I think it would be a tragedy if this service should be killed off before it really gets a chance because to do that you have to say, "Well, we are satisfied with the service that the commercial television now provides. We are not worried about all the unlighted UHF stations and the other stations that are struggling for an audience, that are struggling for revenue and who, many of them, are marginal stations."

This communications business was not built that way. This business was built on innovation and change and growth. It would be a real tragedy if now for the protection of one service we stop growth in this area.

Let me say that the technology, the technological revolution that is going on in the laboratories and in the background of this business make me doubly positive that you should not adopt a restrictive attitude in regulating it.

Our engineers and research people showed us a year ago a wall display using a laser. They had found a way of converting the signal from an ordinary TV set coming in off the air through transducers to sound waves which were then made to impinge on a laser beam as it went through a tube. By some very complicated circuitry they were able to interact the sound with the colength light of the laser so here was a beautiful picture—it happened to be a red and black picture because it was a ruby laser that we were using. This portends we could have the possibility of wall television projected with one or two lasers that would give you a new dimension in this thing, that would stimulate the public's interest in having home entertainment of the kind that they have never had before. This is just only one of the things that is in the offing.

We are working with solid state devices that I am sure are going to enable us to get away from the limitations of this monstrosity of a cathode ray picture tube which means really what you have to do is to put the picture on the inside of a light bulb. The limitations on the size and structure and shape of that light bulb, of course, are very serious.

By use of lasers, by solid state array devices that I know are going to be part of this spectrum in the next 5 to 10 years, this is going to create more of a demand on the part of the public that the limitations on what they can see in their own home will be removed.

I appreciate very much the time you have granted me on this matter. I have not followed my prepared statement but I would like it to be put in the record, if I may.

Mr. MACDONALD. Without objection, it is so ordered.

(Mr. Wright's prepared statement follows:)

STATEMENT OF JOSEPH S. WRIGHT, PRESIDENT, ZENITH RADIO CORP.

Mr. Chairman, I am Joseph S. Wright, president and chief executive officer of Zenith Radio Corporation. We are grateful for this opportunity to appear before you today. Our company pioneered in the development of broadcast subscription television systems beginning in the 1930's, and has been the leading proponent of this new box office programming distribution system during the past 15 years.

In this statement, I will present briefly the principal reasons for our long interest and heavy investment in this new service, and comment on the proposal currently under consideration by the FCC. [Amendment of Part 73 of the Commission's Rules and Regulations (Radio Broadcast Services) to Provide for Subscription Television Service—Docket No. 11279.]

I will be glad to try to answer any question that members of the Committee may have. With me are three gentlemen who have been closely identified with our subscription television activities. They are intimately acquainted with the subscription operation in Hartford, Connecticut:

Mr. W. Theodore Pierson, senior partner of Pierson, Ball & Dowd, is well-known, I am sure, to members of the Committee. He has been our counsel in this matter for over 15 years.

Mr. Pieter van Beek, president of Teco, licensee of Zenith Phonevision Subscription Television Systems and for many years assistant to the president of Zenith, in charge of subscription TV activities.

Mr. Keigler Flake is General Manager of UHF station WHCT, Channel 18, Hartford, Conn., which is operated by RKO General, a subsidiary of General Tire & Rubber Co.

Mr. Flake, as manager of the station, which operates as both a commercial TV station and a subscription outlet, can answer questions about how this new service actually works in Hartford; what it means to subscribers; and what its potential is for independent TV stations.

By way of background, may I just briefly tell you something of our company and its interest in this whole subject of broadcasting. Zenith was started out 49 years ago by two young men building radio receivers on a kitchen table. This was several years before most people had even heard of this new gadget called radio.

The company has grown and prospered over this span of years, and enjoys a leading position in the field of consumer electronics products. We have more than 20,000 employees, more than 50,000 stockholders, and many plants and laboratories throughout the United States and in a number of foreign countries. The growth of the company has come about through our ability to innovate and produce and sell products and services which have won broad public acceptance in one of the most intensely competitive industries in the world.

Our main business is producing and selling radio and television receivers and high fidelity instruments, so that it is natural for us to have a direct interest in the widest possible development of broadcasting—to do everything we can to encourage the best possible radio and television service to the American public.

You would be amazed at the effect new and exciting TV or radio programming has on the public's willingness to buy radio and TV receivers. When the new fall programs premiere—when there is a world series, top pro football games, popular new shows—our industry's sales go up in a soaring curve. In the summer re-run dog days they bottom out.

From this you can see that a producer of TV receivers will necessarily be hurt by any development adversely affecting the quality and character of broadcasting available to the general public. By the same token, our interests will be favorably affected by any development which increases the public's interest in television and which adds new dimensions to the medium.

We became concerned many years ago about the problem of how television programming would receive the financial support required to reach its full potential as the most dynamic new communications medium in the world. We asked our cleverest research people to work on ideas which would make it technically possible for the viewer to share in the cost of programs, box office events which might otherwise not be available because an advertiser could not afford to sponsor them.

Over the years, we have developed a number of different systems which would make this possible. We actually experimented with such a system in field use with a limited sample of 300 customers in Chicago for three months in 1951. Based on the knowledge developed in the limited test, we asked the Federal Communications Commission in 1952 to approve a subscription TV system for nationwide use, as a *supplement* to existing broadcasting.

You are undoubtedly familiar with the fact that the Commission authorized, on an experimental basis, a commercial operation of the service in the City of Hartford, Connecticut, which got under way late in June, 1962. This trial operation has been conducted by RKO General, a subsidiary of the General Tire Company. On the basis of the results of that operation, RKO General and Zenith petitioned the Commission in March 1965 for a nationwide authorization. I need not recount the most recent developments before the Commission, which have been covered in previous testimony.

It is very difficult to say anything about subscription television which hasn't already been said before—there have been more words written about it, one way or the other, than anything which has been before the Commission since its creation.

The operation in Hartford, Conn., has produced the only new and significant data which is based on actual day-to-day operating experience. A wide variety of box-office-type programs have been made available to the subscribers in Hartford over the years of its operation. A detailed analysis of our experiment in Hartford was filed with the FCC in support of our petition for a permanent nationwide authorization, and I have copies available here for the subcommittee's study. In brief, this document shows that, despite all of the limitations that were naturally incident to such a small scale operation, the service was a popular one. It provided first-run motion pictures and other box office entertainment in the home, for the entire family, at a price no more, and usually less, than a single ticket at the theatre, or hall, or stadium, where the same entertainment was being offered at or nearly the same time.

I would like to stress that the Hartford operation shows the American public to be *highly selective* in what it will pay money to see on Subscription TV. One outstanding fact emerges from our experience—any attempt to charge for second, third or fourth-rate old movies or for situation comedies, or the other things that unfortunately make up such a large part of current commercial television, would be doomed to financial disaster. The main problem that will be faced in large scale operation of this new medium is how to encourage and develop the production of new box office entertainment in sufficient volume to attract customers to spend the dollar or two a week that is necessary to make it a commercially feasible proposition.

Our opponents have argued long and loud that if subscription television is permitted on a wide scale the effect will be to siphon away programming and talent from "free" TV and to attract away so many viewers that so-called "free TV" would be seriously weakened. Incidentally, this argument principally originates with the groups of motion picture theatre owners who would be most pleased if somehow or other all of television would dry up and blow away—groups that have persistently fought and, indeed, have gone so far as to attempt boycotts of motion picture producers and distributors who have made old movies available to advertising-sponsored television.

Regardless of their motives in making this argument, the Hartford experience shows us that the average subscription customer spends approximately three hours per week—or less than 10%—of his average viewing time watching subscription programs. Above all, he is very discriminating and selective in what he is willing to pay for. First-rate theatrical productions that are of timely and current interest; high quality motion pictures that are achieving box office success in the theatres; and things like heavyweight championship fights which have been black out on television achieve success at subscription TV's home box office. Motion pictures and other box office entertainment that is of lesser quality perform just as badly for subscription TV as they do in the theatre.

In its proposed Fourth Order and Report the Commission has laid down a great many restrictions which are designed to meet the objections which the theatre owners and the networks have raised. The FCC is proposing them to insure that the service will not be authorized except under conditions where there will be at all times a substantial number of free television facilities available to the prospective customer.

Under the rules of the game, as the Commission has laid them down, we must find programs which are so attractive to our viewers that they will be willing to pay cash money to see them in competition with four other stations in the market.

Subscription TV—Hartford has shown—starts off right away with a handicap of having to sell a product in competition with what the three networks "give" away. (Right here I would like to say parenthetically that I always wince when I hear the present medium described as "free" television since we are asked to pay $1,000 per second—as much as $70,000—for a one-minute commercial.)

Under the proposed rules, sporting events which have been on advertiser-sponsored TV in the preceding two years are denied to subscription TV. We cannot compete for the reruns of old movies that make up such a major part of advertising sponsored TV programs—films that have been out of theatrical release for more than two years. (An exception is made for a limited number of more than two-year-old features which are held out for later theatrical re-release and not available to "free" TV.)

There are a number of other rules all designed to make sure that we do not pre-empt the programming and talent sources that make up the existing system—even if this were economically sound or legally possible, which it is not. I have no doubt that if these rules are not wholly effective in accomplishing this purpose, the FCC and the Congress will do whatever else may be necessary to insure that subscription television operates in the public interest as a *valuable supplement* to conventional TV.

We recognize that the Commission and the Congress have duties and responsibilities to see to it that television reaches its full potential in a sound way; that no one company or group of private interests should be permitted to follow a course of action that would deprive the public of the best possible service.

We accept the burden that subscription television must provide a popular and useful service, as a supplement to our existing broadcasting. We are certainly anticipating that in the event the Commission issues its proposed order and the service becomes a reality, there will be many occasions for scrutiny by the FCC or the Congress of its practices, the service it renders the public, and its impact on other areas of the medium.

We do not subscribe to the rather arrogant suggestion of the movie theatre opponents of this service that the Congress and the FCC, with their broad powers to regulate broadcasting, are going to sit idly by and watch subscription TV develop in such a way that it will wreck the structure of the existing advertising-sponsored system. Nor do we subscribe to the equally arrogant suggestion that the public cannot be trusted to know what it wants; that somehow Americans must be insulated against having anything to say about this new service, or even to have a chance to see how it works on a national basis.

We cannot emphasize strongly enough that our interest in subscription television is in providing a *supplemental* service which will *add to* and not detract from the existing system.

I am not one of those people in our industry who is constantly harping about the bad job commercial TV is doing. I think television has done remarkably well in bringing entertainment, news and other features to the home; but there are certain obvious limitations to the existing economic support of advertiser-sponsored television which frustrate the maximum potential of the medium, and particularly the development of a viable and vigorous UHF system. We believe subscription TV can overcome these limitations, and can provide programs and revenue sources for many marginal television stations which are now struggling to stay on the air.

We are not asking for any protection or subsidy in this venture—all we are really asking for is the opportunity to compete against all three of the television networks and all of the theatres and all other places that sell box office entertainment—and to do this while bound by the most restrictive rules that have ever been imposed on any new, legitimate business in the United States.

I wonder if those who express fears about subscription TV's impact on the present system really believe that General Sarnoff and William Paley and Leonard Goldenson are going to sit by and let subscription television take away

a major part of their viewing audience. These gentlemen have not built their empires by encouraging competitive newcomers—and we have the lumps to prove it. They will undoubtedly use all the talent and ingenuity at their command to make the network programming supported by advertising commercials so attractive and so worthwhile that the number of people watching subcription television will be kept to a minimum.

If our competition makes them better, how can the public lose? I suspect that the real thrust of the network opposition is that this new service might make it possible for independent stations to prosper without having to depend on a network affiliation for survival.

Subscription television, even under the proposed rules, can put many now vacant TV channels on the air, lighting up new transmitter towers and adding service to the public where now there are only dots on an allocation map. The fact is that over 600 commercial TV channels are now unlighted, or about half of those allocated.

Most of these idle channels are in the ultra high frequency band where now 15 years after the allocations were made and more than 3 years after the all-channel law to require manufacturers to put UHF on sets as standard equipment, only 130 commercial UHF stations are operating; about half of them at a loss. More than 100 UHF stations have gone off the air for lack of programs and revenue. By utilizing only part of each day for box office programming, new stations on unused channels made possible by STV can provide local programming during the rest of the broadcast day without charge—locally sponsored commercial shows, public service features, news and discussion of local issues.

Despite the tough competition it will encounter from the networks, subscription TV can help make our TV service more truly local by programming for local needs and in the process encourage along with greater diversity in programming, greater diversity of ownership and control of this dynamic medium.

In short, subscription TV has the potential ability to do two very worthwhile and useful things: (1) It can add—as a *supplement*—a new dimension of current box office programming which is not otherwise available to television. (2) In providing this new source of programs and revenue, it can help accomplish the objectives of our national policy formulated by Congress and the FCC, by supporting the widest number of local television stations. This can only be done if we conduct ourselves within the letter and the spirit of the Commission's rules and of the Communications Act; and, more importantly, *only* if we provide a distinctive new service which the public wants and is willing to support.

While the principal benefits to the public of a subscription system would be to increase the number and kind of TV services—box office programs and additional TV stations—this service has another other important benefit that is closely related.

The Hartford experience has shown that subscription TV brings the enjoyment of top box office entertainment to middle and lower income families. This segment of the population that earns less than $10,000 annually, comprises about 70 per cent of all U.S. families.

In Hartford, 84 per cent of subscribing families have annual incomes of less than $10,000, and nearly half earn $7,000 or less; only 14 per cent are in the over $10,000 per year category, which makes up about 30 per cent of all American families.

But these statistical comparisons don't really tell the whole story, because it is a family story. The real appeal to families can be best illustrated by the experience of one of our subscribers in Hartford with an annual income falling at the lower end of these statistics.

This family has 15 children, varying in age from 2 to 17 years. The father and mother work hard to provide a good home and a wholesome family life for their children. But as all of us as parents want to do, they want to give their children the things that others enjoy. And one of the things that kids love to do is to go to the movies on Saturday afternoons with their friends.

A Saturday afternoon of fun at the movies, transportation, parking, refreshments, etc., could run up a tab of up to $10. A family like this one couldn't afford a movie treat but once in a blue moon.

But Channel 18's Saturday Matinees on subscription TV, at 50 cents to a dollar for the whole family—and as many young friends as can crowd around the set—makes this treat possible frequently—at real savings. More than that, it brings a kind of recreation and social life to the family that they could not have if there were no subscription service.

I might add here that this subscriber doesn't have a bank account. She can't afford it, so she comes in regularly and pays her bill at Channel 18 in cash. Every time, she tells the people at the station what this service means to her children and to her husband and herself.

The Executive Council of the AFL–CIO recognized this potential last month when it adopted a resolution supporting the proposed FCC order that would permit development of subscription TV. The resolution generally expressed the belief that the development of new programming resources would be in the interest of the viewing public, as proposed by the Commission's Subscription TV Committee recommendation.

Offering economy to subscribers results from the basic nature of the service: Subscription TV is a highly efficient method of distributing great box office events. It brings the stage and the concert hall, the arena and the motion picture theatre to the home rather than transporting the audience to the event. It was conceived as a way of adding a new dimension to TV by making it possible for the subscriber's home to become part of the theatre, just as the motion picture brought the stage via the medium of film to thousands of local communities far from production and cultural centers.

A good example of this economy is the Liston-Patterson heavyweight championship, blacked out to conventional TV and piped into movie theatres. In Hartford over 80 per cent of all subscribers viewed it and there was an average of nine viewers per set. The total cost for the nine viewers was $3. At a closed circuit presentation in Hartford this group would have paid $45 at the box office for the privilege of going from their homes to view it in a movie theatre. No wonder the theatre owners are upset and want to "protect" the home viewers!

We at Zenith have felt very frustrated at times by the specious arguments that the public needs to be protected from subscription TV. For nearly fifty years we have struggled in our business to develop and build products for sale to the public. We have literally hundreds of people in our marketing and engineering and research departments who spend most of their waking hours analyzing public tastes and preferences and designing new products to build and sell.

Every day we ship an average of two million dollars worth of radios, phonographs, TV receivers, hearing aids and the like to our distributors and dealers. Every day these products stand alongside the goods of our competitors, and thousands of people in the stores decide whether to buy a new TV set, instead of some new furniture, or new clothes, or a new car. If they decide on a TV set, they choose between ours and a dozen or more other brands. If our product is styled right and priced right and has the features the customer wants, and if he trusts our reputation for quality and integrity, he buys our product.

When we get an idea for a new product or service, we analyze it carefully in terms of cost, investment and—most important—whether it will be one which the public will want and buy. When we do our homework well, the company grows and prospers only because we can make something the public wants, and at a price it will pay. When we guess wrong about our prices or styling or features, we find out right away, because the public is quick to let you know where you stand. This is the great strength of our American free market system which accounts for our economic growth, and in great measure for our personal liberty.

I deplore the attitude that the public can't be trusted to decide this issue for itself—in free and open competition with the networks and the theatres and all the other leisure-time attractions for its entertainment budget.

Zenith developed a subscription TV system because we believe the American public, when given the opportunity, would pay a modest fee to see high quality box office programs in their homes. We believe this service will make their TV receivers more useful to them, by providing a service that conventional TV is unable to do.

The FCC has before it now a proposal for nationwide authorization, developed after many years of careful study and audience testing in Hartford. We believe this plan will enable us to launch this new service, and allow it to develop over a five year period into a nationwide TV distribution system for the finest box office programming.

This new service will be launched under the most severe competitive conditions and strict limitations and restrictions ever to face a new business. It will require the investment of millions of dollars and hard, creative effort on the part of hundreds of individuals and organizations.

We can live within these limitations. We believe we can meet the competition and get underway and put this new service to the test of the free market—as we do with other new products every day of our business life—and risk acceptance or rejection by the public we are trying to serve.

This has always been the ultimate test in our free market system. We believe that the viewing public can be trusted to make this decision.

We have a deep faith that the public will find subscription television a valuable service and, like the people of Hartford who have pioneered this concept in their homes, will support it with their patronage.

In summary, Mr. Chairman, we believe that the American public should have the opportunity to view motion pictuers and other box office entertainment on subscription television, while they are *new* and *fresh* and *without countless commercial interruptions*—and still have the choice of seeing these pictures two or three years later on advertising-sponsored television *with* commercials, when the features' theatrical potential has been exhausted.

The competition between the two types of television service would have a beneficial effect on conventional television, since the competition for audience could motivate advertising-sponsored television to cut-down on commercial clutter, because of audience support of a subscription service without commercials.

It seems to me that the nub of the network's argument is a real fear that there will be a great public demand for a box office television service without commercials.

This is reflected in the inconsistency of their evaluation of the Hartford operation. They charge on the one hand that Hartford has proved there is no substantial public demand for subscription television—on the other, they argue that public demand will be so great that it will cripple the multi-billion dollar advertising-sponsored television system.

It seems perfectly clear the networks and movie theater owners do not want the public to have this choice and will use any means to deny it to them.

Mr. WRIGHT. If there are any questions, I will be delighted to try to answer.

Mr. MACDONALD. Thank you for a very fine statement on behalf of subscription television.

I do have a few questions about your ad lib comments. One of them, of course, relates to the experiment in Hartford.

We are told that most of the programing in Hartford that people paid to see were either movies or sports. Am I correct in that assumption?

Mr. WRIGHT. Yes; for the most part, that is absolutely correct.

Mr. MACDONALD. I am sure you have read the Commission's "Fourth Report and Order" in detail.

Mr. WRIGHT. Yes.

Mr. MACDONALD. One of the regulations that they put forth bothered me a great deal and that is the one relating to sports because sports occupies a large part of the public's thinking. You know the world series are in Boston today.

As I have read their report, it seems to me, and I asked Mr. Hyde about this, as I read their regulation it said that if commercial TV—and I think you have fallen into the trap of saying "free TV" because I agree with Mr. Preminger that it is not free—but if they are willing to forego 2 years of commercial revenue that they receive now—I am talking about the major leagues, I am not talking about the world series; that is a special event just like the Olympics which would be a separate thing, of course, under the 2-year regulation—but is it not very possible that if they were willing to forego commercial revenue for 2 years, thereafter pay TV would have all the sports that are now on commercial TV locked up completely and if you wanted to see any sports event, football, baseball, hockey, you name it, you would have

to pay money into the box to get it under the regulation that they suggested?

Mr. WRIGHT. Mr. Chairman, if you assume the hypothetical case which you have, that regulation, there is never any change in that regulation, that regulation says static and subscription TV, say, would get started at the end of 1968 and that at some point there—now, I don't know what the price is on baseball as far as television; I think for pro football the networks give about $40 million a year. For a 2-year deal, that would be $80 million at these current prices for the pro football games.

Of course, you cannot assume that these things are static, either. This is $80 million in 1967 when the contract was made. It could be $100 million or $120 million in 1969.

I suppose it is theoretically possible that if subscription got to the point where it just absolutely mushroomed and where we got to where we had from three to six and a half billion dollars of revenue, that we could think in terms of, well, could we offer them a hundred million dollars just to keep their games off television for 2 years and then offer them more than that $100 million or whatever millions they were going to have in years after. I don't think that is likely.

Mr. MACDONALD. Mr. Wright, you were just through saying they were tough competitors, the networks, and that they would like to put you out of business. Don't you think it would get to be a bidding thing between pay TV, which would be a monopoly, in my judgment, which is the second question I want to ask you. Is it not just economically feasible to have just one subscription network?

Mr. WRIGHT. We have always taken the position that we were not urging anybody to just freeze on our system and say that this is the preferred system like they have with the NTS signal and so forth. We have said we are perfectly willing to compete with anybody else in this area. So that, whether there is room in any market now for more than one system in a single market, I don't know. Time would have to tell that.

There is nothing certainly that I know of that would prevent that sort of competition except that I would think that if one operation or service got fairly well established in a market, it would make the second one think hard before he went in, not because there was anything wrong about doing it, but we have also envisioned that there would be this service with these boxes and with this coding thing and it would be available without discrimination to any station in that market who was authorized by the FCC to use it.

Now, they have said in this Fourth Report and Order that they are only going to permit one station in the market to use it. So, under that regulation there would be obviously one station in that market which would be using it. I cannot believe that this rule has any great practical effect because it is going to be very difficult to get enough of the kind of things that people are willing to pay money for and that are real box office things to keep more than one station active.

After all, Hollywood only produces 75 or 100 motion pictures that are really worth much in the course of the year. That is only two a week of new motion pictures. What do you have, a dozen Broadway plays, new ones?

Mr. MACDONALD. That is why I think it is a cliche that everyone talks about the arts and ballet and that sort of thing.

As Mr. Brown yesterday pointed out several times, we have already put out quite a good deal of money from the taxpayers to do that sort of thing. So, I would think from your experiment in Hartford and others that I would judge that it would come down to movies or sports events. As far as movies are concerned, and I am not taking a side one way or the other, but a lot of times I turn off a movie just because I get tired of the commercials.

As far as the sport thing, they don't interrupt that often and you can always go out and have a beer or a sandwich or something else.

But this talk that they use in the fourth report about siphoning off programs, would that not go frequently to sports events?

Mr. WRIGHT. Mr. Chairman, you can dream up—I should not use that expression—you can always conjecture about things here in this sort of area with extreme possibilities. This is not an area where we want to operate. We pledge that this is our position and we think this——

Mr. MACDONALD. Are you pledging that you would not buy out the rights for sports events just by paying people not to broadcast for 2 years?

Mr. WRIGHT. Obviously, that is what I am saying. We are not going to take off the world's series and the Rose Bowl games. We are not going to make any deals with baseball or with hockey or with any of these other sports that say if you go off now for 2 years we will make it worth your while.

Mr. MACDONALD. But you could make it worth their while.

Mr. WRIGHT. How could we?

Mr. MACDONALD. Because it is the single biggest attraction, I think, that television offers.

Mr. WRIGHT. Mr. Chairman, where is our growth going to come from and at what point in time would we be in a position to offer professional football?

Mr. MACDONALD. Two years after they didn't commercially broadcast.

Mr. WRIGHT. A hundred million dollars to stay off the air for the next 2 years?

Mr. MACDONALD. You have invested a good deal of money and I am not going to press you about what you have already invested but I would think that would be throwing good money after perhaps bad money; I don't know.

Mr. WRIGHT. May I say, Mr. Chairman, that we have absolutely no intentions of doing anything like this and I can pledge you that this is the policy we are going to operate on.

I am saying to you that we will accept any kind of regulations that the Commission or this Congress wants to make that will be sure that we carry out this pledge.

Mr. MACDONALD. They do have the regulations or at least they promulgated a regulation that said that after 2 years of noncommercial, and I don't want to belabor the point, but they did make that as a part of their order, that after 2 years of noncommercial dissemination of these sports events, then it could go to subscription TV.

Mr. WRIGHT. Mr. Chairman, if the baseball people announced that they were going off television and they were going to take their product away from television, they have to keep it off 2 years in order for us

to get it. If they were going to keep it off, didn't say anything more about it, just take it off television, I know what would happen. The baseball people would be down here in front of this committee and the FCC and we would be down here and the question would come up, what is going on? Why is this going off the air?

I am sure that if that happened it would cause the greatest hue and cry and be the greatest black eye that subscription television and/or baseball could get. I can't imagine anybody wanting to be a part of anything like that.

Mr. MACDONALD. Many industries take black eyes. You know, the oil depletion allowance is a concrete example; it gets a black eye every time Herblock or somebody wants to portray a cartoon about taxes. But they take the black eye and also take the 27.5 depletion allowance.

So, I can see where somebody who is commercially minded as obviously anyone who is in a business has to be, could take the black eye and then make trillions of dollars once you have locked up major league baseball, football, and for my area, at least, hockey.

Mr. WRIGHT. Mr. Chairman, this assumes that this committee is off some place and has no more interest in what is going on in this field and that the FCC——

Mr. MACDONALD. That won't be the case.

Mr. WRIGHT. I agree it won't be the case.

If they took baseball and football and these major things off television that have gotton on now this would cause the greatest outcry and you gentlemen would have sacks of mail that I am sure would overwhelm you and there would probably be a special session of the House as a result of it. Anybody that was involved in that sort of deal would, I am sure, rue the day. I know you can do something effectively about it.

Mr. MACDONALD. I don't want to use more of my time than I should have but the networks don't seem to have that same attitude. They black out sports events in certain areas and the Congress has not done anything about that yet although I hope we do.

Mr. WRIGHT. That is another question. I am no expert in sports. I know that George Halas of the Chicago Bears is not about to let those Bears games be telecast on free TV in Chicago.

Mr. MACDONALD. Why do you keep saying free TV? It is commercial TV.

Mr. WRIGHT. I accept your correction, sir. I wish the stenographer would amend it wherever I have said it and change it to commercial.

Sure, their park is full most of these Sundays when these teams are hot. But there come years, you know, that get a little lean.

Mr. MACDONALD. Not in the NFL. They sell out those parks whether lean years or fat years.

Mr. WRIGHT. I don't know how it is in Washington any more; I haven't lived here for years; but in Chicago the season tickets are inherited. They go down the line from grandfather to grandson.

Mr. MACDONALD. Even in Washington where the Redskins are not the best team, tickets are hard to get.

Mr. WRIGHT. We have people who get special trains organized to go from Milwaukee or some place and they spend $50 a head to see those Bear games. What is wrong with putting those Bear games on at home with pay TV for a dollar if they can't get them any other way?

Mr. MACDONALD. That is why it is in the back of my mind that you would be willing to invest and pay them not to go on commercial TV for 2 years so that you would have the right to have people in Boston watch the game on TV instead of in freezing weather, where it snows a lot, as in Buffalo, watch it in the comfort of their homes with their friends.

Mr. WRIGHT. Mr. Chairman, I am a great free enterprise man. I really believe in the free enterprise system. I think if George Marshall or whoever owns the Redskins doesn't want to sell the home games——

Mr. MACDONALD. My question is, You say you are not going to do that; is that right?

Mr. WRIGHT. That is right.

Mr. MACDONALD. My second and last question is that yesterday we heard a lot of talk about the charges, that you could put a quarter in the slot and watch a movie and I guess it went up to 50 cents, but the top thing about seeing a first-run movie was 50 cents. That was the talk. I am just saying that was the testimony given to us. They said put a quarter in the box, or 50 cents in the box.

I was interested if you have any idea, and you don't have to answer it if you don't want to, but what are the charges contemplated for the first-run movie or a good play? You know, you can only show "My Fair Lady" one time, if at all.

Mr. BROTZMAN. If we could have him explain how this is going to work mechanically and how the billing is to be done, it would be helpful.

Mr. MACDONALD. There are three systems. He has only one.

Mr. BROTZMAN. He just touched on it. If we could have that, it would help a lot, I think.

Mr. WRIGHT. The program book that we showed you has the price of each of the programs that are listed in there. There is one motion picture, Wednesday matinee, for 50 cents, and the evening showing is $1.50. That is a first-run current motion picture. "In the Heat of the Night" was $1.50. "Barefoot in the Park" is 50 cents for a matinee and $1.50 for the evening show.

Now, it is my recollection that the charges that have been made in Hartford for motion pictures have ranged from as little as 25 cents up to $2 top.

The way the decoder works——

Mr. MACDONALD. There are three systems, as I understand it, Zenith's, Skiatron, and somebody else.

Mr. PIERSON. Four, Telemeter and Telecon.

Mr. MACDONALD. Four systems?

Mr. WRIGHT. Right. There is a program number in the booklet, Mr. Brotzman. There is a dial here which is like an odometer. Using this dial, the customer can dial the number for this program at the proper time. He is tuned in to channel 18. He has this switch over here turned to PV, which is phonovision. He dials this number. When he finishes dialing the number, he shuts this cover which has in it a switch.

There is a correlation circuit involved here which, in effect, checks out everything to be sure; it has some memory things in it and checks it out. If everything is all right and working, then a red light goes on on the front of the set. When that red light goes on, the picture clears up and he gets a clear picture and sound.

This also makes a record on a billing tape which is inside the machine. The billing tape prints, when he uses the program, the number of the program and the price. So that, at the end of the period he can dial a certain combination, open this little gate and pull out a paper tape. The paper tape comes out and it has on it the numbers of the programs and the price. The customer can simply add them up, send in his check, or bring it in and square his account.

Now, there is an audit tape, a billing tape, in that that can be used in case there is dispute about whether anybody saw it. It can be checked up.

Now, we have a new generation of these decoders which have been under development for several years. We would propose in our first commercial operation to go in with a new and improved version of this decoder which has a number of advantages in terms of convenience and better cost for the operator, reduce the cost of the system, and customer convenience.

May I make one point that I forgot to make? This has been charged as being something for the rich. The suggestion was even made before the FCC that this would add to the riots in Detroit and Chicago because it would set apart the underprivileged and the poor people from the rich people.

In Hartford, more that 50 percent of our subscribers make less than $7,000 a year. Am I not correct in that, Mr. Flake?

Mr. FLAKE. That is correct.

Mr. WRIGHT. The biggest appeal for this service so far as we have found in Hartford is for people who have a lot of children who can't afford to send them Saturdays to movies. We have people with from 10 to 15 children who don't even have a bank account who come in with their cash at the end of the month to pay for it and say:

Thank you. You know, we have 10 kids and we can all have them around here and see what is showing at the neighborhood movie, and all their friends, for 50 cents, and it would cost us $10 if we sent them there.

This is not for people who buy Cadillacs or three-way color TV combinations. This is for the people who can't afford to spend that kind of money at the box office.

Mr. MACDONALD. Thank you very much.

Mr. Kornegay.

Mr. KORNEGAY. Thank you, Mr. Chairman.

Mr. Wright, let me express my appreciation to you for coming and appearing here and giving us the benefit of your views on this matter. I looked over your program, your STV magazine, for September 30 through October 13.

You put one of these out every 2 weeks I take it?

Mr. WRIGHT. That is my understanding; yes, sir.

Mr. KORNEGAY. It is mailed directly to your subscribers.

Mr. FLAKE. That is correct.

Mr. WRIGHT. By mail, yes.

Mr. KORNEGAY. Is this a rather typical 2 weeks' scheduling of programs?

Mr. WRIGHT. I believe it is.

It depends on the motion pictures and the other things that happen to be available, that General Tire or RKO General can secure for programing in that week.

Mr. KORNEGAY. What I mean by that, the type of show is rather typical?

Mr. WRIGHT. I believe we have had many other shows, the kind of shows which are not shown in this 2 weeks.

We have had heavyweight championship fights. We have had some ballet. We have had some cultural programs. We have had some off Broadway theatrical productions. We have never been able to afford to put on a Broadway show because it has been too expensive for us.

Mr. KORNEGAY. I note here that this program for 2 weeks consists of 10 what appear to be movies—I am not familiar with all of them. I take it they are recent or first-run movies. Is that right?

Mr. WRIGHT. I think you will find most of those are running right here in Washington at our principal theaters right now as well as in Hartford.

Mr. KORNEGAY. It looks like every one of them is either for adults or mature young people.

Mr. WRIGHT. Yes, sir; a great many of them are, there is no question about that.

Mr. KORNEGAY. Take your book here starting with "Fathom," which is the first one. That one is for adults and mature young people.

The next one is for adults and mature young people. Then "Georgy Girl" is adult entertainment. "The Hired Killer" is adult entertainment. The "St. Valentine's Day Massacre" is adult and mature young people.

Mr. MACDONALD. And also a bomb. I have seen it.

Mr. KORNEGAY. And then the next one, "The Fortune Cookie," for adults, mature young people. "Made in Italy," you have the same.

And then "Arrivederci, Baby", adult entertainment.

Of course, they start in the evening at 8 o'clock or 8:30. What is the problem that is created in the home of parents who do have some concern over what their children watch when this is an hour when the average child is still up, 8 or 8:30. I am talking now about the ones under 12.

Have you had any repercussion from that kind of thing from your subscribers?

Mr. WRIGHT. I would have to ask Mr. Flake as to whether he has any but before I do that, Mr. Kornegay, I would like to say that in subscription you know you can control this because if papa or mama has control of this box, nobody is going to watch it until the head of the house or whoever is running that approves it.

As it is now you have four or five TV sets around the house and when Melina Mercouri and shows that are on free TV now, that are in the same category, are on there is virtually no control.

Mr. Flake.

Mr. FLAKE. I have a copy of our STV magazines for the past year. It has been difficult for us on some occasions to obtain childrens programing that you would describe for children. However, I think you will find that a considerable amount of the children's type programing will be found in these magazines in that record for the past year.

"Snow White and the Seven Dwarfs," "The Absent Minded Professor," this type of programing that specifically we attempt to obtain.

Since Walt Disney's death and the problem in this area of obtaining specifically children's type of programing, we have had some difficulty but we do obtain every item that is available in this area.

Mr. KORNEGAY. In other words, this then is not a typical week of your programing?

Mr. FLAKE. It is typical of the availability of the programing for that specific time. We normally attempt to obtain the license for a movie 2 to 3 weeks ahead of time. That is what was available to us for this particular 2-week period.

Mr. KORNEGAY. Of course, this is more your business than mine in a certain sense but you know there is a crowd in this country that is now putting up a tremendous fight to take cigarette smoking off television.

Certainly if they meet with much success in their endeavors, then the antisaloon people are going to come in and say take liquor or drinking off television. Then you are going to move from there to taking the killing off television. Finally I guess you get down to taking sex out of television.

Mr. WRIGHT. You will have nothing left but commercial television.

Mr. KORNEGAY. What do you have left?

My point is if there is any moral to the story at all that somebody could make out a pretty good case for those who are certainly concerned with what is being fed into the American home. I am inclined to disagree with you somewhat over the fact that papa has complete control of that box because with the smart children we have in the homes today it would not take my boy long to work that and quicker than I could.

An example of this is when they got direct dialing. I waked up one morning to find I had an enormous telephone bill. I found out he had been direct dialing his friends while he was up here in Washington. He did not realize it cost anything. They won't realize this costs anything. All they will do is go turn on the set and see all the shows that are in here.

I just thought I would make a point of that for whatever it is worth.

I guess my time is up, Mr. Chairman. Let me ask him one other question.

I am glad that you corrected the record on the question of how many places in the United States would be eligible for your service because the Commission apparently doesn't know. They gave me the answer of 83 on Monday when I asked the Chairman as to how many communities would qualify under their proposed Fourth Report and Order.

You say now it is 29.

Mr. WRIGHT. That is what I have been advised by counsel on it. Where there are already four stations in existence——

Mr. KORNEGAY. Five.

Mr. WRIGHT. You would have to bring a fifth one on to do this.

Mr. PIERSON. I think the difference in the figures, Mr. Kornegay, arises from this fact. Of course there must be five allocations and at the time subscription starts there must be five operating stations.

The Commission said there were 29 communities in which there were operating stations. The difference between 29 and 83 is additional communities in which "there is some activity," meaning an application on file or construction permit outstanding.

But just taking the market today there are only 29 that would qualify.

Mr. KORNEGAY. Thank you very much.

Thank you, Mr. Chairman.

Mr. MACDONALD. Mr. Broyhill.

Mr. BROYHILL. I have no questions, Mr. Chairman. I just wish to welcome Mr. Wright before the committee.

Mr. MACDONALD. Mr. Van Deerlin.

Mr. VAN DEERLIN. The question of disconnections in the Hartford experimental area occupied some space in the Commission's recent fourth report and order. The disconnects seem to affect about 40 percent of the installing operations up there. I was wondering if this had prompted any concern at Zenith and what the explanation was.

Mr. WRIGHT. It has been a matter of some concern.

Let me say that one of the problems that channel 18 has had in Hartford is that when we started off with this service and designed the equipment for it this was designed purely for black and white and that is all that this station has had available. That is all its transmitting equipment is and that is all that these decoders are equipped to handle.

Color has come along at such a tremendous pace that I think color has affected some of the operation in Hartford. Now we have designed and plan to produce in this next generation of decoders a box that doesn't really know whether it is black and white or color, it can accommodate either just as well.

Of course, if the service were to be continued on a regular basis this is the kind of equipment that it would be. Frankly, we have had a real battle, I must say, in programing Hartford. After all, we are dealing with a service where we only had equipment for 5,000 subscribers.

When you go to a motion picture distributor who has a movie that he has put $20 million in and you start bargaining with him on what it is going to cost you and what you can put that on for a potential audience of only 5,000 people, you are limited somewhat.

We found the same thing when we tried to deal with the theatrical producers over Broadway shows. By the time we got through with 18 unions each of whom wanted a percentage of the gross and a lot of guarantees and all, for a 5,000-subscriber thing it was just impractical to program it.

We know if we had a million certainly we could get something like "My Fair Lady," or "Sound of Music" while it was on Broadway.

Mr. VAN DEERLIN. Does this, in your opinion, account for the reluctance of certain of your potential competitors to take part in the experimental stage?

Mr. WRIGHT. Mr. Van Deerlin, I really don't know what was in the mind of some of our competitors. You know, most of our competitors have always thought of this in terms of a cable system. I don't really know whether any of them have worked on and solved the problems of an air system.

It is a tremendously complex thing technically to do this. No one aside from Zenith has really put on a successful, technically, airborne system that I know of. There have been cable systems.

Mr. VAN DEERLIN. Does your prepared statement include a breakdown of the audience by economic levels?

Mr. WRIGHT. Yes, in terms of 14 percent of that audience was over the $10,000-a-year-income bracket. In this presentation to the FCC, this blue book which we have handed you it has a very full breakdown of the kind of audience.

Mr. VAN DEERLIN. And I gather from those statistics that the level excluded by reason of money is only about 30 percent of the population?

Mr. WRIGHT. On page 21 of the blue book it shows that we only had 1.5 percent of our subscribers in the zero to $3,999 class; 44.8 percent were in the $4,000 to $7,000; 43.3 percent were $7,000 to $10,000, and 14.4 were in the $10,000 and over.

Mr. VAN DEERLIN. Do you agree with the Commission's ban on advertising?

Mr. WRIGHT. We suggested it.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. MACDONALD. Mr. Harvey.

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. Wright, I am sorry that I missed the first part of your statement. We have a very important Republican conference taking place at the same hour that this hearing is taking place. That accounts for the fact that we have been trying to alternate here.

I first of all want to associate myself with the remarks of my colleague on the other side of the aisle, Mr. Kornegay, and say that I share the words he expressed completely.

I would say after looking over your STV magazine for September 30 to October 13 that you have almost unsold me with regard to any feelings I had with regard to STV before that time because this is the poorest bill of fare I think that I have seen and I would hate to think that this is what STV is going to be in the future.

I would even go further than that, and say that I think what the motion picture makers have been foisting on America is almost a national disgrace. If this is going to be the lot of television viewers as well, I think that this committee ought to consider very, very seriously what we are doing.

I would hate to see this magazine come into my household and I would hate to see it passed around, among my children. I would share the view that I do not control that television set, nor does my wife. These children today know how it operates and operate it very well.

There is not only one TV set in the household but in the majority of households there are two or three, even four in many households.

I just think that the STV industry certainly should give that great concern which apparently it has not given to date.

There is another thing that bothers me and that is I notice you mention in your statement there would be no siphoning of talent. Let me ask you this: Aren't stars in the category of—I mentioned the other day Richard Burton and Elizabeth Taylor, let us take Frank Sinatra—aren't those stars themselves the ones who control whether they appear on STV or whether they appear on commercial TV?

Mr. WRIGHT. Yes, sir; there is no question about that. That is the way it always has been and I assume it will always be that way.

Mr. Harvey, most of these people appear in all three mediums, or they appear only in one; but that is a matter of personal choice to them.

Mr. HARVEY. They are going to appear on the medium that offers them the greatest monetary reward, isn't that correct?

Mr. WRIGHT. I would say the tendency would certainly be that way. There might be an exception of a man who absolutely doesn't like the stage or he doesn't want to be on the stage or he doesn't want to be on a weekly television show. He may just like the movies.

Or another man does not like making films. He may want to be just on weekly television shows. I would not know how to answer that. Generally speaking, the big stars, the people who have been big names on free television, have always been big names in the motion picture business, they have been big names in other forms of entertainment.

Mr. HARVEY. Assume you would make a reasonable penetration of the market, which I think you would, I don't think 20 percent is unreasonable at all—I have heard that figure tossed around—it would seem to me then that the big stars who already, like Frank Sinatra, make $5 million a year, would find STV to be a bonanza for them because they can hold out for even larger sums.

I can see the "Ed Sullivan Show" being depleted completely of any possibility of getting stars on it in the future.

Mr. WRIGHT. Mr. Harvey, it is hard to project what might happen in the future.

Mr. HARVEY. I know. That is the concern of this committee.

Mr. WRIGHT. The networks have an income of $3 billion in revenue and they have not been able to make deals with these people that would keep them, for instance, out of motion pictures or out of nightclubs or out of theaters. I can't imagine any reason why they would. We couldn't do it.

Mr. HARVEY. I have seen on televesion the "Frank Sinatra Hour" and I have seen a couple of them that have been very, very good. I can't imagine this man doing this on commercial TV in the future when he can do it on subscription TV and realize a tremendously greater sum for it.

Mr. WRIGHT. We have had top stars make special programs for us in Hartford.

We have not been able to afford anybody quite like Frank Sinatra. But we have had them make special programs. It has been difficult because we had 6,000 subscribers.

Mr. HARVEY. I agree with Mr. Preminger yesterday that I don't think your Hartford experience is worth a tinker's damn. I don't think it is illustrative of anything that will happen in the Nation when this particular program is adopted and permitted.

I think you will see totally different results than you have seen in Hartford. I think you will see results just of the nature we are talking about here. I think you are going to see a shift of people going where their service will bring the most. That is only human nature.

Mr. WRIGHT. Mr. Harvey, we have found that this program will not sell. People are glad to watch it on commercial TV but we have found a very small penetration in terms of people being willing to spend money for an evening with Joan Baez or someone like that.

Mr. HARVEY. If you take stars like Frank Sinatra or Dean Martin, whose programs have the highest viewing audience on television,

where their name on the marquee of the theater is enough to fill it up and where their name on the door of a nightclub is enough to bring people in it, when you have those sorts of people appearing only on STV it seems to me this is what you are going to find, that that is where your audiences are going to go and this is where they are going to go because it means the most to them.

I think it is a fact of life we ought to consider. I am not saying we should be against STV for that reason but I am just saying it is a fact of life that we must face.

Mr. WRIGHT. I can't say that it is not possible. The only thing is that we have had several different kinds of entertainment media in the past and we have them now and this has never happened.

These people make motion pictures, they are in Broadway plays. They are on TV shows, Cyril Ritchard, Rex Harrison, they have been in all these media. I just don't believe that anyone would ever suggest to them or that if it were suggested to them, that they could ever sell it, saying we tie them up exclusively so that their services are only on STV.

I can't conceive of such a situation. May I say in connection with the motion pictures, this is a 5,000 to 7,000 subscriber experiment, we have to take what comes along in terms of the motion pictures that are available.

We obviously don't have the bargaining power or the economic strength to really have any influence on the kind of product that is made for the motion picture theater and that is, of course, what these things were made for.

Mr. HARVEY. If this is to be STV this is a disgrace. I would not be proud of this in the least.

Mr. WRIGHT. There will be a lot of pressure exerted on the kind of entertainment that is shown in the home and there should be.

Mr. MACDONALD. I would just like to say that I think what Mr. Kornegay and Mr. Harvey have said about movies have absolutely no connection with STV. It is a condemnation of the movies that people pay to see. I am sure that you are in the business of trying to make the most people use your services and as Mr. Preminger said yesterday, movies never had it so good.

If this is the type of movie that is being turned out I really don't see any difference between having it in the home or letting the children, who are the greatest moviegoers that I know of, go downtown to watch the movie.

You know, I am not trying to be on the side of sin or bad movies or anything but I don't think it is your fault.

Mr. WRIGHT. We turned down two of the top 35 pictures of last year because they were too blue. In other words, channel 18 decided, in exercising their public responsibility as a broadcaster, and they have that responsibility, that even though these pictures were available and the top 35 pictures were the ones that grossed more than $4 million, we showed 28 of them in Hartford, two of them were turned down as too blue; in other words, they were not the kind that channel 18 wanted to show at home.

Five of them we couldn't get because they were hard ticket things that were going around on a reserve seat basis and we could not possibly get them.

Mr. KORNEGAY. Mr. Chairman, let me comment on that briefly. I was not being personally critical of Mr. Wright or his associates but in connection with the movie business, that is right. It is a question of fact that they have no other choice. I am no expert in this business but I think there are enough people in America to make a good high class, high level, inspirational, clean movie to go over if it is done and done well.

But you just don't get that choice.

Mr. BROWN. Walt Disney made a fortune out of that but not everybody goes to see Walt Disney movies.

Mr. MACDONALD. If you will look at the STV magazine for the week before you will see that they did show over STV "Snow White and the Seven Dwarfs." You can't get that every week obviously.

Mr. VAN DEERLIN. I note they took "Virginia Woolf." I am curious to know which of the two they rejected.

Mr. WRIGHT. Mr. Flake, can you answer that question?

Mr. FLAKE. One was "Beach Party Bingo" and another such type of movie that had considerable nudity. Of the 35 movies that grossed over $4 million last year, only seven were not shown in Hartford. The two that we turned down specifically were because there was too much nudity.

We had considerable thought with regard to "Virginia Woolf." On the other hand we had considerable numbers of our subscribers who asked specifically if we were going to have "Virginia Woolf."

Finally we decided that we would, when it came and was released from Warner Brothers, show "Virginia Woolf." We showed it at a time slot whereby we had the greatest hope that no children would see it, at a 10 or 10:30 time slot in the evening.

We do this for the most part in every movie where this type of thing does occur. In our business we cannot censor. We do not cut the movie in any way. We show it exactly as it is released to us by the distributor. As a result we are on occasion given an opportunity to show this type of movie. On the other hand, with the Walt Disney, the productions of "The Absent Minded Professor," this type of thing that we showed for children, we tried to show it as frequently as we could.

During Christmas and Easter vacations we attempt to obtain every possible children's product that we can for a matinee in the afternoon.

As a result, we were very successful and I think if you would take a look at our book for the Christmas period—last year during Christmas vacation—you will find that this matinee was one thing that we did do for the children.

We subscribed to the theory that we should very carefully point out to parents that these movies are for adults or for adults and mature young people. When we say family entertainment, that is the only time that they should allow the children to see these movies.

We are very careful in this respect.

Mr. MACDONALD. The time of the gentleman has expired.

I yield to the gentleman from Pennsylvania.

Mr. ROONEY. I feel badly with all due respects to my colleagues, Mr. Kornegay and Jim over there; I have seen most of those movies. I thought they were quite clever.

Mr. HARVEY. How old are your children?

Mr. ROONEY. That is the one I worry about because he gets that dial and calls Seattle or San Francisco and he is only 2 years old.

Mr. MACDONALD. Will you yield?

I mean this very much. I have never seen cruder, worse things in any movie theater than I have seen, say, on the Ed Sullivan Show. I hope the laws of libel cover committee hearings as well as on the floor. I have seen some acts that he has put on his show that were just as crude and rude as anything could be. I feel like telling my children to leave the room.

Therefore, I don't see why STV is any worse than commercial TV in this respect.

I yield back.

Mr. ROONEY. I just want to get to the mechanics again.

Do you lease this set to the home or is it like the Bell Telephone System, you provide it and they pay as they use it or how is it done?

Mr. WRIGHT. We made these boxes and supplied them to RKO Tele-Radio. They install them in the customer's set. The customer does not buy them. They charge him an installation fee I believe for it.

Mr. ROONEY. How much?

Mr. WRIGHT. The installation fee was $10. Now this is a fairly complicated installation with this particular decoder. Our new decoder is an antenna lead thing clipped on the back of the set. The installation is no problem at all. You have a problem on this. You hate to tie up an expensive piece of equipment with somebody who is not using it at all. This is just ridiculous. There was a 75 cents a week rental charge I believe. This is something that RKO decided.

Now they varied that from time to time. This is an experimental thing. They would give credits to a customer for his rental if he viewed a certain number of shows. I think this has varied from time to time. I don't have in mind all the details. But if he just had it in his home and didn't use it I believe the rental was 75 cents a week for the most part.

Mr. ROONEY. What does the annual subscriber pay? Of the 5,000 subscribers in Hartford what is the average monthly billing approximately? We often hear this is so exorbitant and the American family cannot afford it.

Mr. WRIGHT. $8.50 per month is the average. This is right around $100 a year altogether. That includes everything.

Mr. ROONEY. That is about 50 percent more than the CATV subscribers would pay.

Mr. WRIGHT. Yes. I guess their charges would run anywhere from $3 to $5 or $6.

Mr. ROONEY. I yield to my colleague from Ohio. He wants to ask a question.

Mr. BROWN. My comment referred to something said earlier.

Apparently strong language is stronger than the skin in Hartford.

Mr. VAN DEERLIN. It means it doesn't matter what you have to say if you say it over a high neckline.

Mr. MACDONALD. The time of the gentleman has expired.

Mr. Brown.

Mr. BROWN. I am surprised that somebody has not suggested that the children will have to have money to watch TV and, therefore, this

could encourage child labor because the children would want to have more money to watch television.

Is it possible under the system that commercial television stations that are on the air now in markets where it would be permitted could have pay TV programs?

Mr. WRIGHT. Yes, sir.

In other words, it is technically possible, Mr. Brown, that if we had this set in Chicago and CBS which owns "My Fair Lady" wanted to put "My Fair Lady" on subscription TV we could process that signal out of a CBS system.

Of course, under the Commission rules that they have laid down, only one station can operate on a subscription service but it is technically possible——

Mr. BROWN. I don't know the name of the stations in New York but WNBC is an NBC affiliate in New York. Could NBC buy this system and use their present commercial station in New York to have pay TV programs part of the time? Technically now.

Mr. WRIGHT. Technically it would be possible that everybody in the New York market could be equipped with this kind of box on their set. Technically now any station in the market could have its signal processed so that it could then be decoded by this box and a billing made for that program for that subscriber.

Mr. BROWN. From this program schedule regardless of the sexy pictures in it, do I get the impression that a good part of the time you broadcast free television?

Mr. WRIGHT. Commercial television, that is exactly right. Advertiser-sponsored things that are just the same sort of thing you find on the other stations in the Hartford market.

Mr. BROWN. At 8 o'clock at night in the so-called prime time is when you go to a subscription television?

Mr. WRIGHT. Yes.

Mr. BROWN. And you are not selling commercial advertising?

Mr. WRIGHT. That is right, sir.

Mr. BROWN. With the financial resources available to the networks and the large television stations, the large broadcasters in the country, is there anything to prevent the networks or the large broadcasters from jumping into this if it is permitted so that they are the ones that go off the so-called commercial television into subscription television and the newer stations that come on take up the commercial market in those areas?

Mr. WRIGHT. Mr. Brown, I have heard witnesses from ABC and from CBS and from NBC at various times in this controversy, one just as recently as last week, that was a representative from ABC, say if this thing were approved it was going to take over all of free TV and make people pay for what they were getting free and if the system were approved that they, the networks, were going to get in it and presumably operate it in that fashion.

We are not going, as far as Zenith is concerned, to license anybody to use our system if we can possibly help it, that has any ambitions to do this sort of thing. We are perfectly willing to accept a rule if the networks are the ones that say that this is the way they could operate it if they got in it, then that would bar them from this service.

Mr. BROWN. Bar the networks?

Mr. WRIGHT. Yes, sir.

Mr. BROWN. Let me ask you about the financial needs of this system. What would it cost to convert a television station already on the air in Dayton, Ohio, to an STV type system?

Mr. WRIGHT. We have some figures that have been given in the data on Hartford. We think that a UHF station operating like channel 18 with part commercial television and the rest subscription, can be a profitable, going venture with 20,000 subscribers in the market.

Mr. BROWN. The financial answer. How much does it take?

Mr. WRIGHT. Twenty thousand subscribers—we are talking here about a possible investment of as much as $125 to $150 a subscriber, 20,000 subscribers, you are talking about $2 to $3 million.

Mr. BROWN. You get that back from your subscribers?

Mr. WRIGHT. Presumably over a period of years. One of the principal costs of it is your equipment cost and depreciation.

Mr. BROWN. $2 to $3 million to get 20,000 subscribers, is it?

Mr. WRIGHT. $2,711,500 is the projection we made on page 30 of this blue book. The cost of the decoders and the encoding equipment is a large part of that capital cost, yes, sir.

Mr. BROWN. This is not going to be something that anybody goes into unless they have a little money behind them? It will have to be a fairly sizable investment, with a market survey and that sort of thing, to see if it is going to work, is the right?

Mr. WRIGHT. And it is going to take time. If we got an authorization tomorrow we could not have a system of 20,000 to 30,000, say, in a city like Chicago in less than 2 or 2⅓ years at the very earliest. This is not something that someone presses a button and all of a sudden some monster is full grown.

Mr. BROWN. If this committee would decide, for instance, either to remain silent on this subject, which apparently would mean from the testimony we have heard from FCC that the FCC would go ahead and permit the expansion beyond Hartford of this system, or if the committee would consciously say we will let you go ahead and develop this a little further and see what we think of it as it begins to move, what are we talking about in terms of time before the top 25 markets in the country have STV stations on the air if they found that there was a demand for it, which is another debatable area apparently.

Mr. WRIGHT. I would say we would not be beyond the first five or six markets within 5 years and that to be in 25 markets with a substantial subscriber penetration would take 10 years.

Mr. BROWN. So we are not exactly talking about destroying free television over night if this thing is allowed to move?

Mr. WRIGHT. We are certainly not, sir. We are certainly not.

Mr. BROWN. Under the FCC regulation, you know, you read these things and they are subject to interpretation and I was surprised when the Chairman advised me it is five existing signals rather than four, but do I understand then that the FCC is saying that they can only have one STV station in a community?

Mr. WRIGHT. That is correct.

Mr. BROWN. Is it possible that if you were an STV subscriber and you had two or three station sources from which to get competing STV productions that you would be able to take a choice of those three selections so that if you did not want to watch Raquel Welch but wanted to watch "Lassie" instead, that you could have that choice on STV?

Mr. WRIGHT. Yes, you could certainly have that choice but I can't imagine that choice becoming available to you for at least 10 years because that would mean that this service would have to become so well established and so popular that the Commission would then grant applications by other stations than the first one they had permitted to come in and broadcast on this medium.

Mr. BROWN. It would not be available at all I gather under the present FCC proposal.

Mr. WRIGHT. It would not be available at all. It would only be available if the FCC, after looking at this thing and having all the facts, would decide it was in the public interest to have a second station also operating.

Mr. BROWN. You know, we are supposed to be trying to encourage the development of UHF stations so as to give the viewers in the country a wider number of opportunities to watch a choice of television programs. I gather this is one of the things that has sort of made cable television have some good points, that some people can get television signals, a variety of television signals that they otherwise might not be able to get or only one or two.

Is it your anticipation and could you back it up, depending on what your view is, that if STV were permitted existing on-the-air station that made a lot of money in the commercial market would be the first to go into it? Or, would UHF stations where, as Mr. Pierson says, there is some activity but they are not on the air yet, be the ones that would likely go into this?

In other words, are we going to actually encourage more stations on the air or are we going to have commercial stations go into STV?

Mr. WRIGHT. The only possible stations that can be in STV in the next 5 to 10 years, the way I see it, are either UHF——

Mr. BROWN. Economically?

Mr. WRIGHT. The way I see it economically and in the light of the Commission's order, both—are UHF stations in the large markets where those stations are either losing money or where they have maybe a construction permit and they are sitting on the edge of the chair wondering whether they should take the gamble and try to put this station on the air, knowing that it was going to lose a lot of money.

Now you could not go to the fourth VHF station in the city of Chicago, WGN, which is an independent—WGN makes so much money that for them to take on a subscription television service and to make as much money out of it as they do out of commercial broadcasting, we would have to have 500,000 subscribers in the city of Chicago.

Mr. BROWN. The reason for this, though, is the advertising rates they are now charging on their stations.

Mr. WRIGHT. It is so profitable to them.

Mr. BROWN. They make more profit out of that than they would out of subscribers.

Mr. WRIGHT. Right.

Mr. BROWN. I gather what you are saying is that the people who would go into this business are UHF stations not now on the air because they are afraid they cannot make it in the market selling their service for the advertising dollar?

Mr. WRIGHT. You are absolutely right. We have allocated 634 commercial UHF stations and there are 122 of them on the air. A lot of

them are marginal and losing money. I doubt that if we don't have subscription that many of those 122 will be able to survive.

Mr. BROWN. One other point.

I realize I am a little over my time but if there are four stations now on the air and a fifth station comes on and is an STV station, to what extent will he be competing for the advertising dollar in that viewing area? He won't be competing in prime time apparently for the advertising dollar.

Mr. WRIGHT. No. He has to have a minimum of 28 hours a week that he puts on regular commercials and he will be competing then. Our experience in Hartford indicates that the subscription audience is a very small part of the total TV viewing time in that market and that it does not really take away a large chunk of the viewing time from the existing services.

Mr. BROWN. Thank you.

Mr. MACDONALD. Mr. Ottinger.

Mr. OTTINGER. Thank you, Mr. Chairman.

I am relatively sympathetic to the idea of permitting the pay TV system to go ahead and I think it is something that is going to come in the future and it has very exciting possibilities. However, I do have some reservations and feel there must be some controls to prevent abuses.

Along with our chairman I am a real sports enthusiast. I share some of his concern about some of the practices that might take place whereby subscription TV might preempt sporting events.

I don't buy for a minute your assertions of purity of heart with respect to preempting sporting events. I thought they were pretty shallow particularly in view of the fact of your association with RKO that in point of fact has been buying up sports events, particularly boxing championship fights, and excluding general television coverage of those events and putting them in effect on what is the existing pay TV system, in RKO-owned theaters. I understand, however, that the fight promoters rather than RKO are primarily responsible for the exclusivity of the arrangement.

On March 22, a specific event came to our attention very dramatically where RKO, owning a proprietary interest in the Madison Square Garden, bought the Clay-Foley fight and preempted television of that fight in the towns of the origin of the two principal contenders.

Why should we be at all sanguine that your associates, if not you personally, are not going to do the same kind of thing with sports promoters on this pay TV medium?

Are you going to outbid others on the sporting events or buy them up for 2 years as the chairman suggested and then exclude the public who would want to view the events on commercial television access to these events?

And indeed you could go beyond sporting events and do the same kind of thing with other major large attraction event. Isn't this the kind of thing that should be protected against by regulation?

Mr. WRIGHT. There were several questions there and the answer to the last question is Yes, I think that the FCC and this Congress both have the power to control this medium and to see that it operates in the public interest.

I think you certainly have the power to see to it that we don't do these things that you state.

Mr. OTTINGER. But you haven't.

Mr. WRIGHT. I don't know about the specific matter to which you refer on the Clay fight. Maybe Mr. Flake can enlighten us on that.

Mr. FLAKE. I will be glad to.

Mr. WRIGHT. Generally speaking, the only thing we have put on in Hartford in the way of sports are things that would not have been on otherwise on free television. I am aware of no instance where RKO has taken something away from free television that would otherwise have been on it.

Mr. OTTINGER. You show on your programing here on page 19 of this blue book that 7.31 percent of your programing in Hartford was championship boxing. Were those fights that you broadcast up there preempted from commercial television in that market?

Mr. WRIGHT. Yes. My understanding is that they were not on commercial television anywhere because the promoters of the fights had put them on theater television and were charging people $5 a seat to go into a motion picture theater to see this on television.

Apparently they felt they could get more revenue from the theaters this way than they could get from advertising television. So they elected to put it on that way. We had nothing, however, to do with that decision.

Mr. OTTINGER. I don't care whether you had anything to do with it or not; if the end result is that the general public is excluded from these events it is a bad thing.

You are saying you have nothing to do with it, your hands are clean. That does not help very much if your associates' hands aren't.

Mr. WRIGHT. If you are suggesting really that the public has some right to see anything on free television regardless of whether the owner of that property wants to exclude it from television or not, you are suggesting something that goes pretty far under the present system.

Mr. MACDONALD. Will the gentleman yield?

Mr. OTTINGER. Yes.

Mr. MACDONALD. Obviously you are overlooking the fact that the people who have the licenses to broadcast are only given these licenses by the Government at a very nominal sum in the interest of the public.

Therefore, when you say the public does not have any right it is the broadcasters who don't have any right actually because they are operating under the regulations and the gift of the U.S. Government.

Mr. WRIGHT. I agree.

Mr. MACDONALD. Then your answer to Mr. Ottinger is absolutely incorrect.

Mr. WRIGHT. What I am saying now is that your analogy about a particular heavyweight fight—let us go on now and look at My Fair Lady, which is a Broadway show. This is one of the greatest entertainment events ever.

CBS owned that show. Did it ever get on the CBS network? Of course, it did not get on the CBS network. They sold the right to make a motion picture out of it after a long Broadway and road show thing to Warner Bros. for $4.5 million. It is a great motion picture.

That motion picture is not going to be on free television for 10 years. That is preempted from television. It is preempted by the economics of it.

If you are suggesting that people who produce box office entertainment should be required to supply it to the networks under any circumstances, that just is——

Mr. OTTINGER. I think there are serious questions of public policy. But there is no question in my mind when it comes to the airways, having a concern about blocking out certain areas for commercial purposes, it seems to me that is an undesirable practice as was the case of this Clay-Foley fight. I believe that any agreement which excludes a public attraction from being shown on certain media or blocks out certain geographical areas is in restraint of trade and should be prohibited.

Mr. WRIGHT. Mr. Ottinger, the only uses I know of of the airways that are purely public are perhaps educational television and Government service. Every other use of the airways that I can think of is purely commercial by people who are using them to make a profit.

When we talk about so-called free television it is a very profitable business.

Mr. OTTINGER. I have no dispute whatever that what you say is so. I think Mr. Preminger made that point very dramatically yesterday.

Still, the public does have an overriding interest in the use of the airways themselves. In the assertion of that public interest the Federal Government does exercise regulation by the FCC over the use of the airways, and I think it is a misuse of the airways to engage in the kind of blacking out that has taken place with respect to sporting events.

Mr. WRIGHT. Mr. Ottinger, I could not agree with you any more that the public has a tremendous interest in seeing these things. This is one of the purposes that we have had. Here is a way to bring these things that they otherwise would not get.

Now they say, our opponents say, you can't let the public have it this way because you can't control this thing. Once you set this thing up it will become a monster that will eat everything up. I think that is specious reasoning. I think this Congress and this Commission can stop it.

Mr. OTTINGER. I think it is specious, too. I think it is equally specious for you to sit here piously and say under the regulation of the FCC with respect to sporting events that you are not going, if you are capable financially, to preempt the market.

If you can put ABC and NBC out of business I think you will. I think that is part of the system.

I do think there is an important public interest in seeing to it that the commercial television will be able to exist side by side with pay television, to give the public a maximum of choice. Pay TV will have to be regulated. In my view, restrictive practices of the kind that RKO and sports promoters have practiced should be prohibited.

This is particularly dramatic in the kind of case where the distributor also owns the ampitheater, or owns the sporting team, the production of a play or whatever it may be, then you have a conflict of interest which can operate very detrimentally to the public.

Mr. BROWN. I am not sure where this line is going but I don't remember seeing the Clay-Liston fight on free TV and I think the reason was brought out by what Mr. Preminger or somebody said yesterday, that is, that the theaters outbid whoever sponsored it on free television for the right to show it at the same time in those theaters.

This is a commercial thing. This is the whole point of what Mr. Preminger was talking about yesterday. If you can get $2 or $3 million or several million dollars out of subscribers to pay TV to buy "My Fair Lady" from CBS and outbid the movies, then CBS will sell it, otherwise you might be able to find some sponsor that would buy "My Fair Lady" for a substantial price, put it on free TV but that kills the movie's interest in it, does it not?

Mr. OTTINGER. The situation I cited was somewhat different. It was the Clay-Foley fight that was seen on so-called free TV all over the country but it was blacked out in markets where it was felt more money could be made by selling only to the audience.

Mr. BROWN. I gather it was seen on free TV because some sponsor was willing to pay the price to give it free, to make it a vehicle for their sponsored product, a price higher than anybody else was willing to pay for it through the theaters, or withheld for some other purpose.

Mr. MACDONALD. To wrap this up, I think Mr. Brotzman yesterday, and who couldn't be here for the reasons he expressed earlier, because of the meeting of his party, asked about the success of other experiments, not just your own.

I interrupted him at that time. He was asking Mr. Dingell who was a member of our full committee. I though Mr. Dingell did not have the information and I thought perhaps you would since your company has very adventurously put this amount of money into this particular experiment.

Do you have any knowledge of how the other experiments succeeded?

Mr. WRIGHT. I really don't have any inside knowledge, anything other than what I have read in the trade press and have heard about these operations, at Bartlesville, in Etobicoke in Canada and, I believe, on the west coast.

Mr. Pierson tells me that Telemeter made a complete statement of this on what Etobicoke thing showed and these other things which were filed with the Commission. We will be glad to supply it to you and it will give it to you in some detail.

(The document referred to follows:)

EXCERPTS FROM STATEMENT OF INTERNATIONAL TELEMETER CORP. IN SUPPORT OF RULEMAKING PETITION FOR AUTHORIZATION OF NATIONWIDE SUBSCRIPTION TELEVISION, FILED WITH THE FCC IN DOCKET NO. 11279, MAY 25, 1965, SETTING FORTH FACTS CONCERNING THE ETOBICOKE (CANADA) EXPERIMENT

* * * * * * *

By achieving the technical capability of simultaneously transmitting multiple-programs through a single channel of the conventional television receiver, Telemeter was able to add a new dimension to the techniques of closed-circuit transmission, thus opening unlimited opportunities for catering to the varied tastes of subscribers to a THEATRE IN THE HOME service.

Furthermore, developments in airlink transmission experiments had kept pace with the closed-circuit research and a single-channel broadcast-type Telemeter unit was achieved embodying patentable innovations for the security of uncoded transmission. These, too, conform with the standards of good engineering practice prescribed by the Commission.

As a result, Telemeter moved in both directions. To ascertain the validity of successful laboratory experiments in its airlink system, Telemeter applied to the Federal Comunications Commission for an experimental station first in the VHF and later in the UHF band in order to test its broadcast system in Los Angeles, California. These applications were granted in 1961 (KM2XMR, Channel 5) and 1962 (KM2XOG, Channel 83), respectively.

Telemeter's airlink system is the only one publicly demonstrated to date which requires no modifications whatever to existing TV receivers—no internal connections. It also can receive color as well as monochrome signals. Its decoding equipment attaches externally to the antenna terminals of the television set.

No internal changes in the customer's set are necessary with Telemeter either in the cable system or the over-the-air system, and all connections are made at the antenna terminal of the sets.

2. Etobicoke Experiment

In May, 1959, Telemeter entered into a franchise arrangement with Famous Players Canadian Corporation Ltd., owners and operators of a chain of motion picture theatres in the Dominion of Canada.

A municipality in Metropolitan Toronto, Ontario—the community of Etobicoke—was selected by Famous Players as the site for its initial installation of Telemeter equipment. It contracted with the Canadian Bell Telephone Company, an affiliate of the American Telephone & Telegraph Company, for construction of a cable system in that locality.

An operating company—Trans Canada Telemeter—was created by Famous Players to build and operate the service. Since the franchise granted was the first to utilize the techniques and equipment developed by Telemeter, a cooperative relationship was established between Paramount Pictures Corporation and Famous Players, through Telemeter and Trans Canada Telemeter, to jointly participate in the first field test of the system.

Accordingly, Telemeter actively engaged in all phases of system planning, system construction, development of programming concepts and in the establishment of certain criteria deemed essential to assay properly the results of this pioneering effort into a new and untried form of visual communication.

Of prime consideration were (1) the technical capability and efficacy of the devices invented by Telemeter when subjected to rigid testing in the field; (2) an appraisal of the economic feasibility of operating a cable system supported solely through income of closed-circuit subscription television; and (3), of transcedent importance, a determination of the public's willingness to accept the principle of paying for entertainment in the home.

In selecting an area for experimentation with subscription television, it was easily possible to make a choice where a majority of families are so interested in paying for selective entertainment in the home as to vitiate any conclusions. It was decided, instead, to choose an area where the odds against success were higher than the average community. Etobicoke fitted the concept because:

(*a*) Etobicoke is a residential community situated less than 10 miles from the center of Metropolitan Toronto with a moderate density of homes.

(*b*) It is located in an area with a 93% saturation of TV homes, but, unlike most communities in the U.S. and Canada, has access to six commercial television stations; three stations in Buffalo, N.Y., offering programs of all three U.S. networks, plus three TV stations in Toronto and Hamilton, Ont., including a key outlet on the network of the Canadian Broadcasting system. This represents a choice of channels as great as the principal markets of the United States, New York and Los Angeles. It confronted the cable system with a competitive factor possibly higher than 6 to 1, since in addition to all the entertainment values arising from the programs of the three U.S. networks, there existed the attraction of the Canadian-oriented CBC network and also Canadian independent commercial stations.

In planning the cable system, Trans Canada Telemeter blocked out a section of 12,000 homes, embracing families in various income levels, mostly of Scottish lineage. This ethnically homogenous populace of conservative fiscal habits is inward looking and less responsive to contemporary developments than the bulk of the other urban dwellers. Later the system was expanded to include an additional 2,000 families in a contiguous area embodying some other ethnic groups. Average density of homes in Etobicoke is about 140 to the cable mile.

Canadian Bell Telephone Company began construction of the cable system in the summer of 1959 which was to cover the initial 12,000 dwellings. This required 93 miles of grid, erected at a cost to Famous Players of $2,250 per mile, including installation of special high level amplifiers designed by the research laboratories of Telemeter especially for its cable systems.

Under the arrangements between Famous Players and Canadian Bell, the role of the Telephone Company ceased with completion of the grid and installation and testing of the amplifiers. Drop-offs from the cable distribution system to

homes of subscribers, installation of Telemeter units and maintenance of the amplifiers remained in the hand of Trans Canada Telemeter.

Furthermore, Trans Canada Telemeter paid to Canadian Bell a monthly lease charge for the cable. Initially, the Telephone Company fixed a charge of $25 per mile per month. However, within seven months of completion of the cable system, Canadian Bell reduced its least charge to $10.56 per mile per month.

The initial 93 miles of grid was completed by April, 1960. Eighteen months later an additional 15 miles of cable were strung to reach 2,000 homes in an area immediately adjacent to Etobicoke. This brought the total number of homes within the range of Telemeter programs to 14,000.

A studio site and operational quarters were selected at the center of Etobicoke's business area. The corner of Bloor Street and Royal York Road, geographically speaking, is also the direct center of Etobicoke's residential areas. A one-story structure housed facilities for a film studio, "live" studio, control room, tape equipment, color transmiter, sales department, collection department, servicing department and offices.

On February 26, 1960, Trans Canada Telemeter inaugurated its service to subscribers. Experience gained in all facets of closed-circuit, multi-channel transmission, over a period of five years of continuous, uninterrupted daily service, provides a valid, ample and proved basis upon which to project the pattern for the introduction and successful operation of Telemeter systems in the United States, Canada and abroad. These projections will be summarized below.

As explained above, the Etobicoke market is unique in that extreme competitive forces in operation would put a subscription TV system at the maximum disadvantage. In fact, Telemeter altered its original sample after its initial studies by inaugurating an installation and annual service fee in addition to the per-program charge and by expanding into a less homogenous ethnic area. After the years of experience in and about Etobicoke, Telemeter has been able to come to certain meaningful conclusions concerning the technical efficacy of the system and concerning subscriber interest. It was felt that Telemeter had gathered practically all the significant data that the experiment could yield in light of the self-imposed limitations. Therefore, it was decided to discontinue the Etobicoke experiment as of April 30, 1965.

With the notice of termination of Telemeter service, subscribers were sent a questionnaire asking for an expression of opinion on the types of programs they had enjoyed most, any other comments they might care to make, and whether they would like to see Telemeter return to the Toronto area. To date, over 20% of the subscribers have responded and 96.9% of them expressed regret at the termination of service and urged its early return. (See Appendix "A" for details.)

Based on its conclusions that Telemeter has a marketable system whose commercial operations on a regular basis would be feasible, Telemeter is now negotiating with a potential franchise holder in Montreal, Canada, for the establishment of a regular commercial cable subscription TV operation in that city. Arrangements have been made for similar franchises in the United States in Atlanta, Georgia; Miami, Florida; Dallas and Houston, Texas.

B. REPORT ON ETOBICOKE

1. Audience Acceptance and Support

(a) Preliminary Public Survey

To determine the degree of acceptance and support which subscription television is able to obtain from members of the public in a position to make a free choice, the groundwork for Telemeter's studies was initiated by a survey conducted by Canadian Facts, Ltd. in June, 1959. In that survey 400 Etobicoke families selected at random were asked about:

1. Existing TV viewing habits
2. Types of TV programs preferred
3. Awareness of prices paid for various forms of entertainment available in and around Toronto
4. Awareness of Telemeter and degree of interest in it
5. Willingness to pay for entertainment at home and to what extent

This initial servey revealed the following:

(*a*) Nine of ten homes were TV equipped

(*b*) Fifty-one percent of the males and 29 percent of the females interviewed indicated an awareness of Telemeter, although there had been little concentrated promotion up to that time

(c) Forty-three percent of the respondents expressed interest in Telemeter service

(d) Seven of ten said they would pay $1.00 for current motion pictures in their homes

(e) Two of three would pay $1.50 for a New York originated play

(f) Seven of ten would pay $1.00 for a musical from the Royal Alexandria Palace Theatre in Toronto

(b) *Audience Acceptance*

The actual field experiment which followed the survey passed through two stages of audience development before it settled into a pattern of stability from which meaningful results could be drawn.

Initially, a promotional approach was adopted in achieving mass circulation in the shortest possible time. Service was offered to all comers at random at $5.00 per cable drop-off, including installation of the Telemeter unit and no service charge thereafter. Novelty, curiosity and a degree of over-zealous salesmanship brought a multitude of orders. About 5,500 subscribers were enrolled in less than a year.

When the novelty receded and curiosity gave way to casualness, it became evident that mass circulation for the sake of numbers bred indifference among a segment of subscribers who lacked genuine interest in this form of specialized service. In sum they became "sometime spenders."

A second and more reasoned approach was initiated 18 months after the cable system was launched, when cable service was extended to a contiguous area—the community of Mimico—and 2,000 additional families were brought within reach of the Telemeter grid.

An installation fee of $15 was requested of Mimico subscribers plus a commitment to pay $15 per annum thereafter as a service charge.

Studies were launched to compare the response of the Mimico audience with that of the Etobicoke group, and evidence mounted, after due allowance for an extended period of novelty, that the new subscribers with a greater equity in equipment installed in their homes—plus the obligation of an annual service charge—were making more frequent use of Telemeter than those bound by no financial obligation.

Thereupon, steps were taken to equalize both groups of subscribers. The $15 annual service charge was appended to contracts of subscribers in Etobicoke—with a 90-day notice of change. The expected defections followed among subscribers who had shown indifference to the service.

Telemeter's 2,500 families in Etobicoke and Mimico, linked to the cable system, represented a realistic audience of interested subscribers whose viewing habits and program desires were carefully screened and respected. Their frequency of usage—selective with programming offered—was far more stable than during initial stages of the Etobicoke experiment, a portent of what might be expected in terms of interest and average spending when subscription television service is expanded to encompass vast numbers of homes and subscribers.

In its five years of uninterrupted service, Telemeter has established, beyond question, that there is a large audience willing to pay for entertainment in the home on a continuing basis and, thus, has demonstrated that the THEATRE IN THE HOME *performs a service to members of the public who are unable, or find it inconvenient, to avail themselves of facilities away from home.*

Prime pillars of programming were motion pictures and "blacked out" sports. The extent of subscriber interest in them was evident in a later survey conducted for Trans Canada Telemeter by Canadian Facts Ltd. In response to a question among 400 subscribers' families as to the "best things about Telemeter," the poll showed:

	Percent
(1) Good movies, current movies (64% men—70% women)	67
(2) Sports events (36% men—27% women)	32
(3) No commercials (24% men—22% women)	23
(4) Being able to see current movies at home; no baby sitters (9% men—10% women)	9
(5) See good dramas; new plays (15% men—13% women)	14
(6) Educational programs (8% men—13% women)	7

Audience penetration studies, based on taped information recorded in Telemeter units confirm these findings. They show the following:

1. Choice of film entertainment by Telemeter's Theatre In The Home audience parallels that of the regular theatergoer. Feature films that develop box-office resistance at conventional theatres or drive-ins invariably achieve low penetrations among Telemeter subscribers, despite the convenience of being able to buy such attractions at home for a single family admission charge.

2. "Blacked-out" sports events with high topical interest attain exceptional penetrations among home viewers. Conversely, sports attractions with contenders whose fortunes may lag temporarily, win fewer pay TV devotees than teams, or contestants, with winning ways.

A striking example of parallel attitudes among Home Theatre subscribers and audiences patronizing theatres in their preference of identical entertainment may be found in figures published in *Variety*, the theatrical weekly, in January, 1962. At that time the trade publication estimated the anticipated total film rentals of highest grossing motion pictures released in 1961.

The top five films shown on Variety's chart matched in exact categorical order the highest audience penetrations achieved that year among Telemeter subscribers:

Picture	Anticipated rentals estimated by variety	Telemeter audience penetration (percent)
Absent Minded Professor	$9,300,000	42
The Parent Trap	9,100,000	35
Swiss Family Robinson	7,900,000	32
World of Suzie Wong	7,300,000	28
101 Dalmatians	6,400,000	22

Audience responsiveness to feature motion pictures on Telemeter, it has been found, is not related to the price of admission. A 25% increase in price for motion pictures of high critical merit, has proved to be no deterrent. Most features on Telemeter were shown at $1.00 per subscriber family. About 25 percent of the total had been scaled at $1.25.

Herewith is a comparison of audience penetrations for motion pictures scaled at $1.25 and $1.00:

$1.25 Admission	Percent of audience penetration	$1.00 Admission	Percent of audience penetration
Gypsy	19	Gigi	52
Whatever Happened to Baby Jane	29	Ten Commandments	42
The Great Escape	26	The Interns	23
Hud	16	Mr. Hobbs Takes a Vacation	16
Days of Wine and Roses	15	Period of Adjustment	14
Bye Bye Birdie	15	Barabbas	14
Come Blow Your Horn	14	Son of Flubber	26
The VIP's	25	New Kind of Love	12
Love With a Proper Stranger	15	Fun in Acapulco	20
		Sword and The Stone	17
		Misadventures of Merlin Jones	16

Over a period of nearly five years, the away-from-home games of the Toronto Maple Leafs had achieved an astonishing average audience penetration of 27 percent—ranging from a high of 51% for one game to a minimum of not less than 17%.

Here, again, fluctuations in price of admission had no bearing on the subscriber audience's willingness to purchase the events. During the 1960–61 hockey season, games were offered at $1.00 per subscriber home. Admission was increased to $1.25 the following year and thence scaled to $1.50. Audience penetrations remained uniformly the same.

The nine professional football games of the Toronto Argonauts televised to subscribers in 1961 were scaled at $2.00 per home—and cumulatively averaged

about 23% penetration. "Blacked-out" sports, it is clear are destined to be a bulwark in scheduling entertainment for the Home Theatre audience.

Special Telemeter productions, integrated with motion picture fare and sports, achieved a high overall audience response. An example of this mixture of programs with a diversity of viewer interest was demonstrated the week of April 2 to 8, 1961 when the stage musical, "Show Girl" was "piped" live from New York to Etobicoke and offered subscribers at $1.50 per home.

Playing concurrently on Telemeter's two other Home Theatre channels were the then current motion pictures "Butterfield 8" starring Elizabeth Taylor and a popular British film "Doctor in Love," each scaled at $1.00 per subscriber home. The three presentations achieved a cumulative audience penetration of 73%—36% for "Show Girl," 26% for "Butterfield 8" and 11% for "Doctor in Love." It is estimated that had hockey been in season at the time, total audience saturation undoubtedly would have been achieved.

(c) *Audience Support*

As has been noted above, audience responsiveness is in direct ratio to the stellar nature and to the volume of attractions offered. For example, during a specified test period, the amount of income generated in the Telemeter system depended solely on the amount and type of programming provided. Average income per week per customer fluctuated from about $2 weekly, with varied but limited programing, to about 80 cents per week with only hockey and a part of the motion pictures then being currently released to the theatres in the area.

* * * * * * *

Mr. WRIGHT. So far as I know this is the only airborne type of thing that was ever done. Most of the others were cable systems.

Mr. MACDONALD. Would you conclude that this experiment was a success?

Mr. WRIGHT. This experiment was a success because it gave us the information that we were looking for. I don't mean that an experiment on this limited basis was a financial success or it made money but it gave us the facts from which we could see that projecting this out it would be an economically viable useful thing that would be the kind of thing that could support a lot of UHF stations that otherwise are either going to be off the air or are not going to go on the air.

Mr. MACDONALD. Do you feel that any further experimentation is necessary?

Mr. WRIGHT. Mr. Chairman, I don't know what more experimentation you could really have except this.

Mr. MACDONALD. Mr. Preminger said that Hartford did not prove anything because it only involved 3,000 or 4,000 or 5,000 sets. Therefore what happened to the 5,000 or 6,000 sets is not really indicative of what would be the end result if it were done all over the country.

Do you have any comment about that?

Mr. WRIGHT. I did not mean to indicate that Hartford gave us all the answers. It by no means did. If the Commission would let us go ahead we would be going ahead to move in one large city on a large-scale basis, a much bigger basis than Hartford. We will learn an awful lot more about that before it goes to any other cities.

It is entirely possible, we can't guarantee you that the competition that we are going to face in connection with this is not going to make TV tough for the thing to succeed. We can't guarantee that it is going to succeed. We are not sure of that.

I will say this: that 3 years from now if the FCC lets us go ahead you will then see in a major city a large-scale operation of this.

Before it is something that is spread over the entire country you will have ample opportunity to determine whether or not these regula-

tions that the Commission has promulgated are proper regulations, whether they are adequate, whether they are unduly restrictive, or whether this thing is something that Congress should, by golly, pass a law and outlaw.

Mr. MACDONALD. On that point, perhaps it is in this blue book, I have not had a chance to go through it but who do you think has the basic jurisdiction, this committee or the FCC?

Mr. WRIGHT. The basic jurisdiction obviously is in the Congress of the United States. They passed the communications law.

Mr. MACDONALD. Do you think the FCC had jurisdiction to do this in the first place?

Mr. WRIGHT. Yes, sir; as I mentioned before, we got opinions of counsel that told us this question. I don't mean to suggest by that that this Congress cannot, at any time that it feels that the act needs amending, change the Commission's jurisdiction, in any respect it does not have the full power and right to do it.

Mr. OTTINGER. Mr. Chairman, could I ask one more question?

My feeling on the blackout situation is that any blackout is in restraint of trade and should not be permitted. How would you folks feel about a regulation prohibiting any kind of sale of exclusive rights? That is to say, you could buy the rights and put it on pay TV but you could not exclude the networks from competing and putting on the same show.

Are you for that kind of competition?

Mr. WRIGHT. I can't see any objection to that kind of thing. I can't imagine our making any kind of deal for a product that provided it would not be shown on free TV for a period of time.

Mr. OTTINGER. Does that go for your associates in RKO, too?

Mr. FLAKE. Yes; it does.

Mr. BROWN. I want to ask another question on a completely different angle.

If the amount that you are charging for having this little black box on the television set to provide the pay TV program is uniform for all receivers, how are you going to keep your friendly neighborhood bar from having the things on there and then charging everybody a quarter to walk in the front door or you have to come in and buy a beer in order to watch it, or, you know, enterprising Members of Congress might invite their friends over and charge them to watch their pay TV set in the living room, a sort of extension of commercial activity in this area?

Mr. WRIGHT. We have not really had any problems that way, Mr. Brown, yet. We put it in the veterans' hospitals and things like that free. There is absolutely no restriction on the home subscriber.

If he wants to have all his neighbors on the block in and he can afford to buy the beer and peanuts for them—maybe the fellow next door has a box, too, and they could take a turn with the box.

One family will see it at this house one day and the other family will see it at the other house the next day. I would assume that if this box got to the point where people were taking it and using it commercially to charge admissions on any wide scale that we would have problems with the people who owned the copyrights of the things that we are showing because we are primarily showing this for home television viewing and that would get them upset and we might

have a problem of trying to control that if it became a problem which so far as I know it has not.

Mr. MACDONALD. Thank you very much, Mr. Wright, on behalf of the committee for coming here and giving us a lucid and well-thought-out presentation.

Mr. WRIGHT. I appreciate your courtesy and interest.

If there is any more information desired, we will be delighted to supply it. We have been working on this a long time. We have worked hard. We hope we will get a chance to let the public decide whether it is a proper service.

Mr. MACDONALD. Thank you very much.

The hearing is adjourned until 10 a.m. in the morning in this room.

(Whereupon, at 12:15 p.m. the subcommittee adjourned, to reconvene at 10 a.m., Thursday, October 12, 1967.)

SUBSCRIPTION TELEVISION

THURSDAY, OCTOBER 12, 1967

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND POWER,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. Torbert H. Macdonald (chairman of the subcommittee) presiding.

Mr. MACDONALD. The hearing will come to order.

We are honored this morning by having the dean of the Democratic Party here in the house to testify before us, the chairman of the Judiciary Committee, the Honorable Emanuel Celler of New York.

It is a great pleasure to see you here.

STATEMENT OF HON. EMANUEL CELLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. CELLER. Thank you, Mr. Chairman. I thank the rest of the members of the committee.

We usually say one man with courage is a majority. I can say two men with courage is a majority now.

Gentlemen, I appreciate the opportunity of appearing before this committee which throughout this week has been earnestly probing the critical problems raised by H.R. 12435, a bill which would, by amendment of the Communications Act, preclude the FCC from authorizing the broadcast of pay television programs.

The proposed fourth order and report transmitted by the panel of three FCC Commissioners constituting the Subscription Television Committee, recommends that the Commission establish an over-the-air subscription television—STV—service for the Nation and adopt certain rules governing that service.

This would entail authorizing the exaction of fees for program reception which could affect a potential 80 percent—I repeat 80 percent—of the country's television set owners.

I appeared before the full Commission and urged that it reject this departure from our traditional system of free program reception, and leave inviolate the spectrum devoted to public broadcast frequencies.

Just so, I appear here today and urge this subcommittee to approve the principle of H.R. 12435 which would prevent the inauguration and establishment of subscription TV.

In my view, the developments of the past 12 years, since the FCC has been stewing over subscription television—including the experimental pay television broadcast operations conducted in Hartford,

Conn., as well as the operations by wire in suburban Etobicoke, Toronto, Canada—fail to support, and in large measure contradict, the basic conclusions and recommendations advanced by the Subscription Television Committee.

I note that the chairman of the FCC committee filed a caveat stating that his agreement that the report be submitted to the full Commission did not imply his endorsement.

Indeed, Commissioner Wadsworth, at the outset of the argument before the FCC last week, made clear his concern about the validity of some of the fourth report's basic premises.

A decade ago, our House Antitrust Subcommittee, of which I am chairman, completed its extensive hearings and report on the major problems of achieving a truly nationwide and competitive system of television broadcasting, compatible with the avowed objectives of the Communications Act of 1934.

The vital issues before the subcommittee in these hearings have been a matter of particular and continuing concern to me for an even longer period.

In this context, I was impelled in 1957 and again in 1960, to convey to the then Chairman of the Federal Communications Commission, my evaluation of the added burdens and dangers which the introduction of experimental subscription television would create for the traditionally free television system authorized by Congress.

In this connection also, I introduced legislation designed, as is the bill now before the subcommittee, to prohibit toll television charges for home receivers.

On Tuesday, October 10, 1967, my good friend Otto Preminger, the movie maker, testified here in support of pay TV. According to the newspapers, his appearance was both entertaining and informative.

I have long admired Otto Preminger, particularly his ability to make and distribute successfuly the movies that have earned him well-deserved fame.

Do not be misled, however, by his geniality and by his enthusiasm. You know, and I know, why Otto Preminger appeared before this committee. He was not here to advance the forces of free enterprise. Otto Preminger was here because he wants to sell his movies. He has his own ax to grind.

He is very successful in selling movies through movie theaters. Now he wants to move the movie box office to the living rooms of the United States.

Why does he want to do this? It is because he knows he can make more money from his movies with the box office in 55 million living rooms than he can through negotiation with the networks.

Otto Preminger says that the television setup we now have is not "free." It is "Madison Avenue propaganda," he says. That may very well be but I ask you, gentlemen, did the people have to pay $2 to turn on the television set in their living room to look at the World Series? Did the viewers of the ABC network pay $2 or more to turn on their living room television set to see Otto Preminger's movie, "The Man With the Golden Arm"?

ABC paid Otto Preminger $650,000 for "The Man With the Golden Arm." This was after a successful showing in the theaters of the United States. If 20 million people paid $2 each to see it in their living

rooms, that would have made $40 million revenue from that one showing.

Obviously, Mr. Preminger thinks under pay TV he could get a bigger slice than $650,000.

He told you that the networks would not close down, that they would just work harder. I agree. They will work harder to get into pay TV. What then would happen to free competition? Otto Preminger would then cry with hindsight tears.

On reviewing the voluminous fourth report submitted by the FCC Subscription Television Committee, I am convinced that today, more than ever, the major pitfalls to which I directed attention still threaten and would in no wise be eliminated by the restrictions or so-called "safeguards" with which the FCC Committee would hedge pay-television operations.

Measured by any objective standard, the experimental test carried on at Hartford, Conn., over the past few years falls far short of providing the meaningful and "significant demonstration" of trial operations for subscription television, which the Commission deemed prerequisite for further action.

To premise a full blown, untried, and highly complex pay-television system upon deductions drawn heavily from the shallow Hartford experience, is to erect a towering edifice upon a quicksand foundation.

While recognizing the manifold inadequacies of the single Hartford trial as the "projected basis" for a "new service" to be launched on a nationwide basis, the FCC Subscription Television Committee nevertheless takes comfort in the view that it provides "some attachment to reality as opposed to mere conjecture that existed before."

The phrase "some attachment" is rather flimsy as an argument. Be that as it may, there can be no justification for a reckless gamble on so tenuous a basis with a natural resource which belongs to and is so widely utilized by the people at large. Such an approach would be in derogation of "the overall public interest," which the Commission has affirmed must be the touchstone for reaching its decision in this matter.

Insofar as demonstrating any public wish for pay TV, the Hartford test was completely negative. On a 3-year basis starting in 1962, less than 1 percent of the potential of 675,000 homes in the station's service area subscribed. In fact, fewer than 5,000 families, or less than three-fourths of 1 percent of the potential audience subscribed at any one time.

There were also a substantial number who dropped out. The average subscription audience to any one program (from among all those who subscribed) was less than 6 percent.

I have failed to find in the pages of the fourth report, or in any other quarter, any indication of an expressed public desire or pressing need for the institution of a pay television system. I am, therefore, at a loss to understand how an affirmative decision by the FCC on an issue of such magnitude and so fraught with risk, can be justified at this juncture.

Where is this public demand? From Zenith? From Preminger and all those who have axes to grind? Tell me where the public demand is. What organizations throughout the Nation, credible organizations, have demanded, have come here and asked the Congress for pay television?

We begin with the basic premise that today the programs of our present television system are free to the viewer, and that the sponsor pays the cost.

It is now proposed that we jump headlong in a radically different direction. Let the viewer pay. In other words, it is advocated that a tax, a nongraduated tax, if you please, be imposed on the one who turns the knob. The television spectrum is (and this cannot be repeated too often) a national resource belonging to the people.

To put it bluntly, pay television is like unto wheat grown on my land, harvest reaped by others, with a demand made upon me for the payment of rent.

Pay TV will affect every viewer in the land since we know well that the level of income has no bearing at all upon ownership of a television set. There are some 55 million television homes in the United States. Over 90 percent of those in the $4,000-and-under income own sets. Let us ignore them, shall we?

After all, what place do these viewers have in this argument? Indeed, let them eat cake. In other words, "the hell with them."

Logically, then it follows our networks, as they have stated in the past, will reach into this field. This intention was reaffirmed by network spokesmen before the FCC last week.

Again assuming the success of pay TV, we are very likely to see a dismaying competition between sponsored television and pay TV for major sporting events, movies, leading personalities, et cetera, if indeed the networks have not by that time moved completely into that area.

I say that to turn the cost—and I have said this before—of a television set into a mere downpayment to be followed by a lifetime of installment charges for the privilege of enjoying a public resource would be an act of complete irresponsibility and an utter disregard of the public interest.

Sponsored TV is surely capable of "good" programs—and that, of course, is a value word—and that it has not done so is due certainly in part to the laxity and ineptitude of the Federal Communications Commission, partly to the apathy of the public, and partly to the shortsightedness of the networks.

Instituting pay TV will unquestionably relax the responsibility placed on the Commission and the present broadcasting systems.

Let us face the fact and face it squarely—that television for profit, whether free or toll, whether paid for by the advertiser or the viewer by a set fee, must remain a popular medium to succeed.

The viewer at all times has a privilege of selectivity. The viewer who prefers the so-called cultural programs is by his very nature a highly selective creature. Hence, pay TV will not change the nature of the problem. The heart of the problem lies in the television industry itself, and, as I have said before, both in the viewing public and the regulating agency as well.

When it comes to programing, I believe that the television industry is as much a victim of the rating practices as is the viewer, and whether there is or is not pay TV the level of TV will remain what it is unless the industry and the FCC assume the responsibilities with which they are charged. If pay TV is to be profitable the very same problems which beset the industry today will drown pay TV operations.

It is interesting to observe that the Fourth Report recommends FCC regulation of programing of cash box TV. As Chairman Hyde has confirmed, this is a new and brave concept—interfering with the nature and kind of telecasts, and ordering the stations to use this proportion of feature films and that proportion of sports events. Similarly, the FCC will say "no commercial ads."

We are dealing with a powerful industry. How long would the Commission withstand the pressure of that industry to permit mercantile ads on STV? How long could the Commission ward off the blows to change the nature of the programs?

It is interesting to note that for fear of being guilty of "censorship" and violation of section 326 of the Communications Act, the FCC in the past studiously avoided touching programing—even a minimal of programing.

If it had taken the plunge long ago and had really regulated in the public interest—had regulated and policed programs—we would have a far healthier free TV industry today. But it failed and refused to regiment or regulate programing and thus quality was sacrificed to quantity—quality of telecast was deemphasized in order to permit more programs with highest appeal to the lowest intelligence—with the greater cash box return.

If we have pay TV I doubt that the Commission will remain fixed in a determination to regulate by controlling programs and prohibiting ads. I doubt that the Commission can succeed in this.

The odds against it may be too great. Just as water constantly dripping on a stone can wear it down, so unremitting pressure of many sorts will wear down the Commission.

The fact is that even now pay television enterpreneurs want the grand prize free of any restrictions. At the very threshold, they want no rules. They want to be utterly free to do everything and anything they wish with a public resource.

We are told by the Subscription Television Committee that pay television will provide a beneficial supplement to conventional television programing; that the impact of subscription television on conventional television will be minimal; and that while some preempting of time and siphoning of programs from free television could occur to a degree contrary to the public interest, specially tailored regulatory safeguards will in the main be effective to protect free television (notwithstanding that some program siphoning from free television will occur in any event).

The FCC committee also looks forward to "competition" between the two systems with beneficial programing results.

Let us first take heed of where this might lead in terms of the tremendous built-in profit potential of pay television. An illuminating and, I believe, realistic insight is provided by the statement by the Association of Maximum Service Telecasters in the recent argument before the FCC.

Once begun, the potential revenues of STV are almost unlimited. The STV-report has very conservatively estimated that subscription TV penetration would be approximately 10 percent to 20 percent. On the STV report's figures, there is a potential for STV being authorized in markets constituting 80 percent of the nation's television homes or 45,100,000 television homes. At the 20-percent penetration rate, this would give nationwide STV a conservative total potential of approximately 9 million subscribers, or 16 percent of the total television homes.

Assuming only this level of penetration and the report's low projected revenue of $105 a year for each subscribing home, this would give STV at least potential annual revenues of $945 million.

Or almost a billion dollars.

Now those figures may be high but those are the potential figures. You can subtract from them if you wish but make as deep a cut as you want, you can see what "gold there is in them thar hills," gentlemen.

As to programing, in years past, proponents of pay television presented a most alluring picture with a promise of supplemental and superior programing to suit the divergent tastes of the discriminating viewer.

This indeed was among their foremost arguments. It was claimed, as stated in the FCC's first report on subscription television that "subscriber financed broadcasts could and would provide a wider choice to members of the public interested in the fine arts, operas, educational and informative material and other similar kinds of programs."

This is a thesis I never accepted.

Some 3 years ago, I had occasion to write:

A careful study of pay television broadcasting persuades me that the assignment of a segment of the television spectrum to a subscription service will merely increase viewers' costs and broadcasters' profits without producing any long-term improvement in programing. Merely because pay television would collect new revenues it does not follow, as its proponents predict, that it would produce programs of better quality. Actually, there is no dearth of programing resources, whether financial, technical, or artistic. Present-day television is capable of presenting superlative programs, and sometimes does. All that is needed is producer confidence in the validity of the public taste. But pay television cannot be expected to devote itself exclusively or extensively to artistic or cultural programs. It may reasonably be expected that pay television, much like present day commercial television, will be subject to the same pressures to cater to the mass audience for maximum profit.

In precisely the same vein, the authors of the Fourth Report now conclude that the present "reality is that the major part of the subscription television programing, as opponents had argued will be of the kind that will appeal to a mass audience." (Fourth Report, para. 56.)

I note that during the first 2 years of the Hartford trial, feature films constituted 86.5 percent of all television programing; "special entertainment such as operas, ballets, concerts and recitals constituted 5.5 percent; and educational features, viewed by only a handful of subscribers constituted only 3.2 percent of the total."

Pay TV will again appeal to the lowest common denominator. If adopted, I predict it would become as former Chairman Minow said, a second "vast wasteland."

I applaud the application of free enterprise to free TV. Free TV in nongovernmental hands is superior to any other system. There is no suggestion anywhere, I hope, which says the TV chains or networks or the separate stations must act as eleemosynary or philanthropic enterprises.

Nor is there any edict anywhere that their profits must constantly reach skyward without any restraints or limitations whatsoever. They have a monopoly—limited in a sense—yet a monopoly of the air waves.

But as recommended in the FCC's fourth report there is to be no limit on profits for pay TV. It is well to remember that even the

Redwoods do not grow up to Heaven. Yet as to toll charges or toll TV, the sky is the limit. The only restraint is in what the traffic will bear.

Diversification in programing, insofar as the Hartford and Etobicoke operations show, must be sought elsewhere. Hope lies in the rapid growth of free educational television service that has taken place such as in National Educational Television providing educational and cultural programing.

I am encouraged by projects such as the projected nonprofit Corporation for Public Broadcasting, which would be financed by Government and private funds. The reform is approached in the bill recently passed by the House, and referred to by Chairman Macdonald at the outset of these hearings.

It has been stated that the corporation will probably concentrate on promoting cultural and public affairs programs, including operas, serious dramas, and documentaries. If we permit pay TV and pay TV fails, we will not only have indulged in wasted motion, but used that wasted motion to inhibit the progress of educational TV.

While feature films were a mainstay of the Hartford programing—as they concededly would be in nationwide pay TV—it is well known to any television viewer that in recent years they have likewise taken an important place in conventional television programing.

Nor is there any reason to assume that free television is not moving in the direction of more recent film showings, since the backlog of older films is being rapidly consumed. If pay television programing is to be justified on this basis, the case is weak indeed.

With respect to sports, the case is weaker still. The plethora of sports events on free television over the past several years is a well-known fact. The fourth report nevertheless stresses the occasional championship boxing match or "blacked out" home games in football—restrictions which have been imposed on free television broadcasts.

This surely provides no "beneficial supplement" to the adequate sports programing the American public now receives. For example, NBC on Sundays practically devotes all afternoon to football and baseball.

Nor am I persuaded that the regulations against siphoning proposed in the fourth report, would in any sense be effective. The Subscription Television Committee concedes:

> Of the various arguments raised by subscription TV opponents, we find that of so-called selective program siphoning most persuasive. It is at least conceivable that a successful nationwide, subscription TV system, even though possibly not having as much money as free television to spend for program product, could, by directing its purchase at select programs, e.g., the world's series or professional football gams, take them from free television and require the huge audience of those programs to pay to see them or not see them at all (fourth report, para. 111.)

I believe it is inevitable, for example, that despite the initial restrictions conceived by the Subscription Television Committee, professional sports would sooner or later find a pathway to toll television, for the additional pot of gold at the end of the rainbow, which this multimillion-dollar institution hardly needs.

I do not regard the regulations set forth in the fourth report as effective to prevent destructive siphoning of programs from free television.

In the event that pay television is successful on a nationwide basis, there is no guarantee that even the present regulations will not be eroded.

This is understatement in view of FCC Commissioner Loevinger's observation at the recent oral argument to the effect that there is "general agreement among proponents and opponents" of pay TV that "the program supervision proposed" by the FCC Subscription Television Committee, "is impractical, ill-advised, unwise, illegal, and unconstitutional and a few other things."

That comes from a Commissioner himself. You judge for yourself what that all means, gentlemen.

Permitting subscription television would divide the viewing public along economic lines according to ability and willingness to pay. Apparently STV would in the main serve an affluent minority wishing to view at home relatively new movies or sports events not available on free television.

The Subscription Television Committee, confronted with the contention of subscription TV opponents, "that 30 percent of the Nation would appear unable to afford STV" and therefore its authorization would not be in the public interest stated, fourth report, paragraph 75:

> We do not find their arguments convincing. Among other things, we did observe that under the rules which we adopted herein, all those in the lowest income group who own television sets will be able to continue to see ample amounts of free television programing, so that they will not be deprived of anything, while at the same time a substantial portion of the people will be given the opportunity to view STV if it so desires.

At best, pay TV condones a discriminatory pattern that runs contrary to our philosophy. Almost one-third of the population of a given community might be barred from programs utilizing public broadcast channels to which they might otherwise have had access.

Worse yet, their free television service would be subject to downgrading and depreciation in view of the inevitable siphoning of talent by pay television despite whatever restrictions are imposed.

These direful results should stay the Congress from further inaction. We should promptly and effectively stamp out the false enthusiasm now generated by a small but powerful group of pay TV tycoons.

> By default we have allowed the investor's equity to control what is basically a public service industry. Broadcasting has been treated as though it was some kind of 19th century mercantile enterprise in which property alone meant ownership.

Thus spoke Fred W. Friendly in his book "Due to Circumstances Beyond Our Control."

Well, TV is based primarily upon a Government franchise to use public property as a monopoly. As such and in return the licensee must render service in the public interest and welfare and the license is held only on good behavior. It is not a property right.

The Government, the people have some interest. Frankly, in my opinion it is unreasonable for a station which, when originally franchised, was not expected to make much money, now makes $5 or $10 million a year.

Should a license received originally for little or no outlay become a legacy with $20 or $30 million without the people who granted the license retaining an equity in it? (Friendly, id., p. 292)

The Supreme Court, in construing the Communications Act, ruled that the license involved no property right. Yet there is no license holder who does not feel that he has a perpetual right in the license, even though he must renew it every 3 years. That opinion is bolstered by the fact that no important station permit has ever gone unrenewed.

Yes, there have been some small stations whose permits were not renewed but not a single important station. There have been derelicts of an extreme sort in many of those cases.

Do not create, by refusing to pass the bill, another gargantuan monster in the form of "coin-in-the-slot" television with assurance of stupendous profit.

Just as the FCC could not or would not really regulate sponsored TV, they would not regulate properly pay TV. Thus the evils of sponsored TV would be duplicated in pay TV.

Finally, as to the jurisdictional issue, I believe there is grave doubt whether the present Communications Act and its grant of authority contemplate or embrace the authorization of on-the-air pay television.

I say this despite the views of the Communications Commission.

This subcommittee has already explored the issue in depth in the course of these hearings, and I shall not belabor the point.

Apparently the hand of the FCC will not be stayed even by the resolution of your parent committee—as well as that of the Senate Interstate Commerce Committee—that authorization of subscription television should not be granted unless and until the Communications Act of 1934 is appropriately amended.

Chairman Hyde, at the conclusion of his testimony last Monday, testified that the Commission believes it is empowered to act on subscription television in the absence of amendatory action by the Congress. Favorable action on H.R. 12435 would clear the air once and for all.

You have enough danger signals against pay TV. Heed them.

To summarize, careful study has convinced me that the conversion of any segment of the television spectrum to the service of toll television would increase viewers' costs and broadcasters' profits, and this without any substantial hope of producing any long-range improvement in programs.

Free television, as we know it, may be downgraded to a secondary and economically untenable position. The best existing programs the public is accustomed to receiving without charge may be drained off.

The trend, noted by the House Antitrust Subcommittee, toward the monopolization of outstanding talent and program product will be accelerated. The television audience will be divided along economic lines. A method of broadcasting will be inaugurated that may drive free network television as we know it from the air waves.

The foreseeable result is a television system in which we will all be paying for much the same TV fare which now comes to us without cost.

That is my statement, gentlemen.

Mr. MACDONALD. Thank you very much, Congressman Celler.

As you were talking I was thinking, and once again you do not have to answer if you do not want to about this but I asked the question of the witness the day before yesterday and I know you are a true expert in this field.

One of the problems that I think perhaps drives people to being receptive toward pay TV is the fact that in certain areas events are blacked out.

The witness I asked said, and he represented on of the biggest networks, there might be antitrust action lie if the networks agreed not to have blackouts in certain areas in which sports events are ocurring. He said that competition was fierce, as I recall his words, and if all three networks, the three largest networks, got together and agreed that they would not submit to blackouts in any given area even though the participant in the sports event, a fight or football game or something like that, asked for it in their contract, and I know you are an expert in this field and, of course, it will be a curbstone opinion and I will not hold you to it, do you think that antitrust action could lie when this is not a restraint of trade but rather a broadening of trade?

Mr. CELLER. Technically and on principle it is a violation of the antitrust laws for the networks to get together and to do just that but I doubt very much whether the Department of Justice would prosecute under those circumstances.

It would be a simple matter for the networks to make arrangements with the Department of Justice, the Antitrust Division, and get immunization for those particular acts because they are worthwhile and they are really in the public interest.

That has often been done in other lines of endeavor. Thus, there would be no danger at all, I am quite positive of that, of any prosecution of the antitrust laws under such circumstances.

Mr. MACDONALD. I am glad to have you say that because that is what I thought, myself.

The second and last question is this. We had a bit of a run-in about the copyright problems on the floor, if you recall, on CATV. I was wondering if you could elucidate further about that.

Do you think that CATV has changed the acceptance of pay TV?

Mr. CELLER. When we had the copyright bill up we eliminated all provisions concerning CATV, awaiting further developments in CATV.

What I have said this morning has nothing to do with CATV. CATV is quite essential in certain areas of the country which can't get reception at all because of the geography and nature and topography of the country. This has nothing to do with CATV. That is perfectly laudable.

Mr. MACDONALD. Thank you very much.

Mr. Kornegay.

Mr. KORNEGAY. Thank you, Mr. Chairman.

Mr. Celler, my colleague and good friend, it is certainly nice to have you before the committee. We appreciate your coming over and taking your time to express your views on this matter which, as you can understand, to the subcommittee is a very complicated and difficult sort of thing.

I noted your statement and observation that pay TV would be for the affluents, the wealthy of the country, to the disadvantage of lower income families.

Some of the testimony on the part of the pay TV people yesterday indicated that in the Hartford experiment 50 percent of the subscribers

were families with less than $7,000 a year income, the theory and the reasoning behind it being is that these people could much better afford subscription television than they could to take their entire family, particularly those with a large number of children, to the movies or to the place that were being shown on subscription TV.

Mr. CELLER. The bulk of the Nation's families are not in that class. There are so many, many, millions, around $4,000 income, and they are the ones that would be hurt on this pay TV. You must remember, also, that as I indicated, I don't know if you were present, there is no limitation whatsoever on the cost that could be charged for pay TV. It could be 25 cents for a movie or it could be 50 cents for a movie, it could be $2 for a prizefight.

The only limitation is what the traffic will bear. Once they get a foothold and they are able, as I indicated, to siphon off the best of talent, and the best of sports events, if perchance they could get all the World Series over pay TV and if they paid enough for it they could get it, the people probably would be likely to pay $2.50 to $3, maybe $5, to see the last game of the World Series.

They would pay $5 to see the game in their home, you would and I would, too, without going to the ballpark to park the car, wait an hour for the car to get it unparked, take an hour to get to the ballpark and so forth.

Here for $5 you could see the whole game with utter ease and comfort. Sure, you would pay $5 probably. Now that can't be paid by most of the owners of television sets and that would be duplicated, that kind of event, manifoldly.

Mr. KORNEGAY. I agree that that is one of the problems and the question I have previously raised in the hearing is whether or not the Commission would offset the prices.

Mr. CELLER. This would divide the Nation in two classes, those economically able and those uneconomically able to pay the toll. That is contrary to our American principle.

Mr. MACDONALD. Will you yield?

Mr. KORNEGAY. Yes.

Mr. MACDONALD. I just point out that in the order it is stated that that can't happen with any program which has been broadcast previously, and, therefore, the World Series would not come off.

Mr. CELLER. As I said before also, the rules are ephemeral. It is a relatively simple matter to get the rules changed in the Federal Communications Commission.

The Federal Communications Commission is of such a character, and I do not mean to attack anybody in particular, I am speaking of the institution generally and I would like this to be off the record——

Mr. MACDONALD. Off the record.

(Discussion off the record.)

Mr. MACDONALD. Back on the record.

I yield back.

Mr. KORNEGAY. Mr. Chairman, this is a little bit unrelated, really not germane to our inquiry here, but I can hardly let the opportunity that we seldom have to have your wisdom on these matters to let the matter go by without asking you this.

We are presently scrutinizing in the Congress and in the country and in the press the method of carrying out and financing elections in the country. The Senate, you know, has a bill to provide for Federal revenues to pay for the campaigns of the President and Senators.

The House has under consideration, I think the subcommittee of your full committee, election reform laws: The cost of running campaigns certainly is in the minds of those who run for public office. I just want to ask you your thoughts and opinions on this approach.

You stated that television particularly was a highly profitable adventure. What would be your view on some requirement or regulation which required the television stations of the country to provide a certain amount of free time, a reasonable amount of free time, to candidates for public office?

Now one of the causes for the tremendous increase in the cost of campaigning has been the cost of campaigning on television. If the television stations of the country as a public service could provide a reasonable amount of free time to the candidates for public office——

Mr. CELLER. I tried to get, for example—and I say this as a preliminary to answering your question—the profits achieved by the networks and the stations. I was unable to get a breakdown; they would not give it to me. Maybe your committee could get it.

You will pardon me if I dwell a bit on it before I finally answer your question.

Mr. KORNEGAY. Yes, sir.

Mr. CELLER. I asked for the television pretax profits. In 1960 the wholly owned and operated stations of the three chains—ABC, NBC, and CBS—had profits of $61.6 million. In 1966 it was $108.1 million. This is before taxes.

In other words, it went from 33—the network profits were $33 million in 1960 and the network profits were $78 million in 1966, the three of them. I could not get a breakdown as to each one of the networks on that.

Mr. BROTZMAN. What was that last figure?

Mr. CELLER. $78.7 million. If you add the network stations and the network profits themselves it goes in 1966 to $187 million.

Now I want to preface that statement before I answer your question. In view of those profits I do not think there would be much skin off the back of these stations to allow Members of Congress or the Senate or the candidates in presidential elections to have a reasonable amount of time to show their wares, as it were, to express themselves on the issues in the campaign.

Mr. BROWN. Will the gentleman yield?

I wonder if we could put in the record the percentage of profit that that amounts to on the volume of business.

Mr. CELLER. I will put those in the record if you wish.

Mr. BROWN. Does that include the percentage that is to the total volume of business?

Mr. CELLER. These are expressions not in percentages; they are millions. I was wrong when I said percentage. There are millions of dollars.

(The following table was subsequently submitted by Mr. Celler:)

TELEVISION PRETAX PROFITS

[in millions]

	Wholly owned and operated stations	Network
1960	$61.6	$33.6
1961	62.4	24.7
1962	74.7	36.6
1963	79.9	56.4
1964	96.3	60.2
1965	102.2	59.3
1966	108.1	78.7

Mr. BROWN. I am interested in what percentage of total volume of business the $33 million profit is or $78 million profit.

Mr. CELLER. I do not have that. You can get that I am sure. You can get it easier than I can. You can get the splitup.

Mr. Chairman, I think you can get that without any trouble.

Mr. MACDONALD. We will certainly try.

(The following information was obtained by the committee:)

EXCERPT FROM FCC PUBLIC NOTICE 5317, AUGUST 25, 1967

"TV BROADCAST FINANCIAL DATA, 1966"

The networks and their owned and operated stations reported revenues of $1,166.3 million, expenses of $979.5 million, and pre-tax profits of $186.8 million. The three networks reported pre-tax profits of $78.7 million on revenues of $903.9 million (8.7 percent); network owned stations, $108.1 million on $262.4 million (41.2 percent); and the 593 other stations, $306.1 million on $1,036.7 million (29.6 percent).

Mr. CELLER. Of course, they won't give it to a Congressman unless he keeps it for himself and he can't make it public. I did not want to take it because I would have to say something about it. But I got it from other sources.

I will give you another sidelight on that if I may.

Mr. BROWN. These are all public corporations are they not, Mr. Chairman?

Mr. MACDONALD. They are.

I don't really understand what this has to do with pay TV.

Mr. CELLER. Mr. Brown, I can give you some other idea of profits if I may. This is from Friendly's book "Circumstances Beyond Our Control" [reading]:

A case record of profits with which I am familiar in a television station is Providence. In 1955 owners of the Cherry and Webb Department Store who were the operations of the radio station WPRB, went on the air for original investment financed by radio profits of a little more than $1 million. Channel 12 in Providence, a city of 200,000 people serves the State with a population of some 800,000 and part of nearby Massachusetts and Connecticut.

Still because the Boston stations also carry to Rhode Island and because Providence has had difficulties with its economy, WPRO–TV comparably speaking could be called a bonanza. Yet in 1959 the Cherry and Webb interests sold their radio and television station to Capital Cities Broadcasting Corporation for $6,500,000. Today its, president told me the franchise could not be purchased for $12 million.

WPRO–TV's annual profit is something over $1,250,000, earns the 1959 purchasers more than 19 percent a year on their equity. But WPRO–TV is below average.

The medium revenue of profitable VHF stations in 1965 was $1,490,000.

That gives you some idea of the considerable profits here.

Mr. MACDONALD. You had better identify the source.

Mr. CELLER. This is page 267 of the volume "Due To Circumstances Beyond Our Control" by Fred W. Friendly, published by Random House.

I think under those circumstances arrangements might well be made to allow free time or a modicum of cost to Members of the House and the Senate and the President.

Mr. KORNEGAY. And the national ticket. I gather from what you say, Mr. Chairman, that the cost of that to the television stations would be so slight it would not have an appreciable impact on their financial situation.

Mr. CELLER. None whatsoever.

Mr. KORNEGAY. And, of course it would be very helpful to the candidate, particularly those of us who have limited resources with which to run for public office.

Mr. CELLER. It would be in the public interest.

Mr. KORNEGAY. Thank you.

Thank you for coming.

Mr. MACDONALD. Mr. Van Deerlin.

Mr. VAN DEERLIN. I hope we would not have to put it to a public vote whether they let 435 Congressmen and their opponents on every 2 years.

Mr. MACDONALD. I am not sure how high the rating would be.

Mr. VAN DEERLIN. I have a feeling I know.

Mr. Celler, I arrived a little late for your prepared testimony.

Do your objections to subscription television apply to subscription television in any form rather than just over the air?

Mr. CELLER. Only over the air and into the homes.

Mr. VAN DEERLIN. What about into the homes by cable?

Mr. CELLER. By coaxial cable, no. My statement is not addressed to that at all.

Mr. VAN DEERLIN. Is it not likely that many of the objections you raise to subscription television would apply regardless of the technique of introducing the signal?

Mr. CELLER. They might but I don't think that is the issue here, is it?

Mr. VAN DEERLIN. Only insofar as you have raised it in your testimony.

Mr. CELLER. I have not touched that at all. I personally do not think that my statements would indicate or could be spread to indicate opposition to coaxial cable television.

Mr. VAN DEERLIN. Except that if coaxial cable television brought the World Series for $5 in the coin slot it would have the same effect as if the signal came over the air. The only question might be whether the FCC had the power to regulate.

Mr. CELLER. Depending on the circumstances, that may be deemed purely intrastate. I question whether the FCC would have jurisdiction in it. That is a grave question.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. MACDONALD. Mr. Brotzman.

Mr. BROTZMAN. Thank you, Mr. Chairman.

I have just one question and I think your greatest competency to testify would be in this area, Mr. Chairman.

Did I understand that it is your legal opinion that the FCC does not presently have jurisdiction over this particular matter?

Mr. CELLER. I think that is correct.

Mr. BROTZMAN. You say that, having studied this proposition, is that correct?

Mr. CELLER. What was that last?

Mr. BROTZMAN. You make this particular assertion, having studied the legal propositions presented?

Mr. CELLER. Yes, sir, and I think it is incumbent upon the House to act so as to remove all possibility of doubt. The FCC must have had doubt because, as I said before, for 12 years they have been stewing around with this question whether they should or should not.

If there were clear-cut decision, their counsel, and they have counsel, would have told them to go ahead. But they have their doubts, too; otherwise they would have gone ahead long ago.

I think all doubts should be removed by some affirmative action by Congress. I don't think Congress can any longer pass the buck, to use a word of common parlance.

I think it is the duty of the Congress to say something now. Otherwise they are going to act. By your silence they will act. I don't think they have a right to act but they are going to act.

Mr. BROTZMAN. I yield to the gentleman from Ohio.

Mr. BROWN. Mr. Chairman, in the same vein, do you feel that the FCC has or has not the jurisdiction to regulate program content should we permit pay TV to go on the air?

Mr. CELLER. I would not want to have the Congress determine that the FCC shall go whole hog on regulation of programing. That might be an undue interference but I think there should be some words placed in the statute to give them some minimal authority over what the traffic is.

As I understand the Supreme Court decision on this matter, when the Supreme Court spoke of determining the composition of that traffic there ought to be some words there giving the FCC some authority. They have always shunned it. They have given the stations and networks almost free rein to do almost anything they wish.

Mr. BROWN. Does this raise any questions with reference to the first amendment so far as you are concerned?

Mr. CELLER. Yes, sir. I think we have to be very careful. You are walking a tight rope.

Mr. BROWN. I would be interested in seeing language which would permit us to give them some control but not whole hog control over this delicate area of program content.

Mr. CELLER. When you say regulate I think you involve in the word "regulation" some modicum of determination of what shall go over the airways. There must be something like that otherwise there is no regulation at all, they go hog wild on it, I mean hog wild in the sense of doing nothing.

I think the time has passed for that.

I think it is essential for this committee to work something out. I don't want to take on more burdens but we will be very glad to have our staff work with your staff, if you want it, on words.

Mr. MACDONALD. Mr. Rooney.

Mr. ROONEY. Mr. Chairman, I want to thank you very much for your very informative presentation here this morning and make one personal observation and that is your testimony was both informative and entertaining.

It is too bad that two friends such as you and Mr. Preminger can't get together and sort of compromise your views on this subject.

Mr. CELLER. Did you hear my statement? I commented on Mr. Preminger's statement.

Mr. ROONEY. I know you did. All the testimony I have heard during the past few days have been either black or white, either for or against. Do you possibly foresee any way in which this pay TV can be compromised?

Mr. CELLER. I do not see how the issue can be. You are either for or against pay TV.

Mr. ROONEY. I have heard some good points about pay TV and you have pointed out the bad points. I just wondered whether or not there was some way in which it could be compromised.

I have no further questions.

Mr. MACDONALD. Mr. Brown.

Mr. BROWN. Mr. Chairman, the reason I was interested in the percentage of profits versus just the flat number of dollars was that while the dollars sound very impressive you do not have to go to $78 million to impress me, I am impressed with $33 million or even $1 million.

But I do think that the system operates on the percentage of profit the business makes and sometimes a large total number of dollars sounds very impressive whereas the percentage might not be quite as awesome.

Mr. CELLER. You are correct but I could not get that information.

Mr. BROWN. The other question I would like to ask you is this.

I have some figures which I have not been able to establish with the FCC yet simply because I have not had the opportunity, but I am advised that there are 1,239 total commercial station allocations made by the FCC, 634 UHF, 605 VHF, and that there are now 616 of these 1,239 stations operating and another 163 which have received construction permits but which are not on the air.

Presumably that leaves 460 or roughly a third of the allocated stations either not operating or utilizing their construction permits, not on the air.

If that is the case, will we encourage more television presentations on the available channels of everybody's television set by permitting pay TV, or can we expect that these stations will all go on as commercial stations drawing their support from the advertising dollar available in a community and therefore having an effect on the existing stations on the air?

In other words, I would presume there are so many advertising dollars in every community, and if you add another station supported by

advertising dollars, wouldn't you lower the quality of programing as you lower the potential for making a profit in a community?

Mr. CELLER. I do not quite understand fully the question but I can probably answer it partially.

The television rates are rather high, they are the highest of all advertising rates. I think they are too high. If they were in anywise lowered or could be lowered, if there were more competition, more stations, they probably would be lowered, it would give more opportunity for the smaller merchants to advertise their wares and in that sense you might attract more advertising over the airways.

Mr. BROWN. This is the problem I am citing.

We have some 460 station licenses, allocations made, where the stations have yet to go on the air for one reason or another. Now, I can imagine a lot of reasons. Perhaps they could not get the financing. But if it is such an attractive business based on the advertising dollar, I would think they would rush to get on the air, that bankers would be happy to finance such a profitable venture and we would have a greater opportunity to see more selections on free TV.

Mr. CELLER. Of course, the spectrum is limited and it may be to put too many stations on you blur the reception.

Mr. BROWN. No, sir; that is not the issue.

There are 12 available VHF channels on all the sets in my area and two or three communities that serve my congressional district that are communities of some size, half million, don't have more than two or three VHF stations and one or two UHF stations and there is an unlimited spectrum it seems.

Mr. CELLER. It may be so that the additional TV would not pay in that area, I don't know. There may not be enough advertising. How would pay TV help? Pay TV has to go into a very large market or major market.

Mr. BROWN. What I am suggesting, sir, and this is where I want to get the response, is that if it is because they would not pay as commercial stations with sponsored programs, because there are only so many advertising dollars, it might be that we could get more stations on the air if we could put them on as a subscription station.

Mr. CELLER. I don't think so. I think we would have the opposite because the market is not sufficient to be tapped to get enough to support a pay TV operation. It would not have an audience where there would be a mass appeal, not enough population probably in that area. Over-the-air pay TV, with its great initial investment, must appeal to vast numbers, large numbers, otherwise I don't think it would pay.

Mr. BROWN. Thank you, sir.

Mr. CELLER. And presently, I am told by my aide here, the franchises and potential applications for pay TV are in the leading major markets, not in the small areas.

Mr. MACDONALD. Congressman, thank you very much for being here. We appreciate hearing from you.

Mr. CELLER. Thank you, gentlemen.

Mr. MACDONALD. We now have the gentleman representing ABC.

STATEMENT OF EVERETT H. ERLICK, VICE PRESIDENT AND GENERAL COUNSEL, AMERICAN BROADCASTING COS., INC.

Mr. ERLICK. Mr. Chairman and members of the subcommittee, my name is Everett H. Erlick. I am vice president and general counsel of the American Broadcasting Cos., Inc.

I appreciate the opportunity to appear before you today to express ABC's views with regard to pay television.

The question of whether the public should be required to pay for radio and television service is by no means a new one.

In the hearings which led to the Radio Act of 1927, industry leaders joined Commerce Secretary Herbert Hoover and others in opposing the establishment of the kind of systems in use in foreign countries requiring the "payment of a fee."

Statutory provisions which might have been construed as authorizing broadcasters to charge listeners a fee were eliminated in joint conferences by the House and Senate. With these deletions, the leaders of the bills, which eventually became the Radio Act of 1927, were able to assure their colleagues that the legislation gave no authority to impose a fee and consequently there was no need to authorize the Commission to regulate rates charged to listeners.

Ensuing developments—between the enactment of the Radio Act of 1927 and the incorporation of its principal provisions into the Communications Act of 1934—confirmed the views shared by Congress and industry that under the American system of broadcasting, the listener or viewer should not be charged a "fee" for the program he receives. This principle had become so well settled that in enacting the Communications Act of 1934, the rate or fee question was not an issue.

Thus, by 1927, and even more convincingly by 1934, broadcasting in the United States had taken on a definite pattern—the cost to be borne by the sponsor and the broadcaster, with no charge to be levied on the public. This pattern, fully known and accepted by Congress, was a keystone of the regulatory concepts embodied in the basic 1927 and 1934 acts.

In our appearance before the House Committee on Interstate and Foreign Commerce on January 22, 1958, ABC summarized its opposition to the authorization of pay television as follows:

1. Pay TV will supply little, if anything, that the public does not receive today on free television—and with each succeeding season television expands its already rounded program service.

2. If pay TV succeeds, the programs now seen on free TV will move to pay TV. The public will be the loser, for it will be forced to pay for programs it now sees free.

3. Those who will suffer most will be people in the lower and middle income groups, those who can least afford to pay. These are the ones to whom a television set is a means through which they can bring their families into contact with everything which is most exciting in the whole field of entertainment, sports, news and information and public affairs—indeed, the whole gamut of our activities as a nation.

4. The Federal Communications Commission was created by Congress to develop and foster our American system of free radio and free television—not to authorize or encourage another system which could lead to its destruction, without first ascertaining the will of Congress.

5. Irrevocable changes should not be made in the system which the Commission was established to aid and develop until the Congress expresses its will.

6. Commission experience demonstrates the difficulty of "turning the clock back" after interests become established, after the public has relied upon the Commission's action, and after substantial expenditures have been made.
7. Congress should not be by-passed on matters of basic national policy.

In essence, the foregoing seven points are as relevant today as they were when we advanced them in 1958.

These hearings come at a propitious time, a time when the Federal Communications Commission is considering the report of its Subscription Television Committee, which proposes the establishment of a nationwide pay television service.

The Commission, in common with numerous other administrative agencies, is an arm of Congress. The purpose of these agencies is not to make national policies but to implement policies Congress has enacted.

No one can deny, in light of the record of the FCC proceeding, the many congressional hearings, and legislator and public expressions on this subject, that to impose a pay television service on the broadcast frequencies, as has been proposed, has become a highly controversial issue of national significance.

Whether pay television should be authorized in any form—in broad scope as heretofore urged by its relatively few proponents or in restricted, and intensely regulated form as suggested by the report of the FCC's Subscription Television Committee, is precisely the type of question which should not be resolved by an administrative agency, no matter how broad its general statutory powers. It is one which Congress alone should determine.

It is common knowledge that the price which the free television system can pay for exhibition rights is determined principally by the value to advertisers of commercial messages associated with various programs. Assuredly, there is a limit to the price advertisers can and will pay for program sponsorship and, hence, a limit beyond which free television cannot bid for exhibition rights.

However, the price which pay TV entrepreneurs would be willing to pay for exhibition rights is limited only by the aggregate price which the viewing public is willing and able to pay to see the program. It is a virtual certainty that pay TV could afford to pay more for certain programing and could outbid free television for the most popular attractions.

Consequently, it is clear that pay TV would have detrimental effects on the present free system. Given the opportunity, it would inevitably result in the "siphoning off" of attractions such as the world's series, professional and collegiate football games, as well as some of the most popular entertainment programs. While the siphoning might not occur overnight, in time much of the most popular fare on free television would be removed to pay TV.

Additionally, unrestricted pay TV, using existing television channels, would deprive the public of significant numbers of hours of free television service and could threaten the operation of the national television networks. If all stations are permitted to engage in pay TV operation, people who reside in areas which receive signals from only one, two or three stations would suffer a substantial and real loss of service.

Where stations which are network affiliates engage in pay TV operation, particularly during prime evening hours, network clearance of programing could be severely affected with serious effects upon the economic viability of network television. This problem is particularly sensitive for ABC, which has fewer primary affiliates, has the greatest difficulty in obtaining clearances for its programs, and is most likely to be hurt by any erosion of advertiser support.

The FCC Committee's report relies on the very limited Hartford experiment and on the claims of prospective pay television entrepreneurs as justification for the conclusion that a system of pay television would serve the public interest.

As to the Hartford experiment, the one thing that it established conclusively is that a pay television service cannot be developed on a national scale unless it acquires exclusive broadcast rights to the very programs now commanding the largest audiences on free television. Only the hit attractions of established popular appeal—motion pictures of unusual story and star value, sports of major importance, and variety shows with big names—drew meaningful numbers of subscribers.

We should also point out that the claims of prospective pay television entrepreneurs have consistently proven wrong. When television was in its infancy, they claimed it could not possibly become economically viable by relying exclusively upon advertiser support. When the experience of the late 1940's and early 1950's proved this incorrect, they shifted their ground. What is needed now, they claimed, is not a system to supplant free television, but rather a system which would supplement it. They then asked for an opportunity to experiment, and to prove that they could provide a service not then available on free television.

Although pay TV's supporters originally urged that program diversity, in the form of opera, ballet, symphony, and Shakespeare would be the kind of fare pay TV could and would offer—and the Commission in the past has considered such alleged diversity to be among pay TV's principal assets— the Hartford experiment demonstrated, and the Committee's report largely concedes, that such diversity is unlikely from pay TV. There is a very understandable reason for this. The public simply refuses to pay for such attractions on a meaningful scale.

The FCC report now takes the tack that even if pay TV does not offer significant amounts of programing of a different kind from that available on free television, it may still provide a beneficial supplement. ABC believes it is significant that the case for pay TV has fallen from the lofty heights of program diversity to the present level of whether the supplemental service is of such value of significance as to offset the anticipated adverse effects.

The issue is not whether the public is to be denied a nightly diet of symphony and Shakespeare. The issue is simply whether access to a few more current motion pictures and limited additional sports exposure is of sufficient benefit to offset the tremendous destructive potential of pay television.

The FCC's Subscription Television Committee report recognizes that pay television, unless sharply restricted and regulated, would drastically undermine free television. To avoid this pitfall, the report

proposes to fix the age of feature films and the extent to which sports may be broadcast and to outlaw for pay television use certain series programs with on-going plots or continuing casts.

We are strongly of the belief that Congress has not given the Commission supervisory control of programs nor has Congress intended that it engage in excessive day-to-day supervision of broadcasters. Moreover, we know of no meaningful way in which rules or regulations could be devised which would afford free television effective protection against siphoning.

In an attempt to protect the public from loss of service and the free television system from serious impairment, the Commission's Subscription Television Committee also proposes to restrict pay TV to communities within the grade A signal range of five or more commercial television stations and to limit pay TV to one station in each community. Thus, pay television would be made available principally in the larger urban areas of the country. However well motivated, this would be discriminatory and unfair to the less-populated parts of the country.

In the interest of protecting free television from the impact of pay TV, the FCC also proposes to limit the number of franchises in any community to one; but in so doing, it would create monopolies. The inequities are obvious. Having created monopolies, there is an obvious need for regulation of rates; yet the Commission does not propose to regulate rates or to ask Congress for permission to do so.

These examples demonstrate that the moment an attempt is made to reconcile the interests of pay TV with those of free television, one is caught in a chain of consequences approaching a dilemma.

I should like to emphasize that we do not oppose pay TV because we fear competition. The FCC's policy of fostering competition was responsible for the creation of our company. The record will show that we have consistently supported competition in those areas which we believe are in the public interest.

We supported the all-channel receiver legislation which had as its purpose the long-range development of UHF stations and expanded competition among licensees and networks. The Congress is also aware of our support for a public television corporation, which as an independent broadcast service will compete with us for audience.

I am sure that all of us agree that constructive competition is the driving force behind the great forward movement of American business. But no rule of policy we know of favors the acceptance of destructive competition contrary to the public interest.

It is safe to assume that the advent of pay TV would affect the profitability of network operations. The ABC–TV network has been operating at a loss for several years. It would be unrealistic to assume that a reduction in the profitability of network operations would not be accompanied by a contraction of network endeavors in the news and public affairs and other areas.

It is indeed ironic that the issue of pay television, which has been largely dormant in recent years as a result of the successes of free television and the failures of the pay television trials, should be resurrected at a time when the American system of free television is on the edge of exciting new breakthroughs:

The advent of the communications satellite had made international television a reality and the era of global television lies just ahead;

domestic satellites may soon be in use, enabling 24-hour network service to affiliates; "public broadcasting" legislation is close to enactment; the all-channel law has opened the way to many new stations and an everwidening program choice. At no time in television's brief history has there been less reason to turn back the clock and encourage the creation of a system which is both destructive and antisocial in its implications.

We urge this committee to initiate and recommend appropriate legislation to prevent the establishment of pay television.

Thank you, Mr. Chairman, for allowing us the opportunity to express our views to this distinguished committee.

Mr. MACDONALD. Thank you, sir.

One question that has been going through my mind as I have listened to all the testimony which has been given is that it seems to me the broadcasters are arguing on both sides.

On the one hand you say that pay TV experiments have been a failure and on the other hand you say what a bad effect it is going to have on so-called commercial TV.

Now do you connect the two? If it is failure, then how can it possibly harm you?

Mr. ERLICK. Mr. Chairman, I think what we are saying is that to date these experiments have proved unsuccessful. But we may be wrong and the next experiment may be very successful, in which case pay TV would be a springboard and the consequences would flow that I think we have outlined here.

Mr. MACDONALD. You have to make up your mind whether they are a danger or not a danger.

Mr. ERLICK. We think they are. The fact that they have not succeeded to date does not mean——

Mr. MACDONALD. Then they have been successful?

Mr. ERLICK. No, sir; I don't believe they have but the fact they have not been to date does not mean that they won't be in the future.

Mr. MACDONALD. You live on the public, not you, but the networks live on the public by sponsors because sponsors won't keep shows that they don't think influence buyers to purchase products; is that right?

Mr. ERLICK. Yes, sir.

Mr. MACDONALD. If they have been a nonsuccess, I am now talking about pay TV, how do they bother you?

Mr. ERLICK. Mr. Chairman, I do not believe I can answer it in any way other than the way I have.

Mr. MACDONALD. It has not been a very successful answer.

Mr. BROTZMAN. Will you yield to me for one question along the same line?

Mr. MACDONALD. Yes.

Mr. BROTZMAN. It seems to me in the first part of your statement, Mr. Erlick, you are talking about how bad it is and back here you state how the low-income people across the country are going to be discriminated against by not having it.

Do you understand the inconsistency? You say this is bad per se and back over here you say under the rules of the Commission as they are proposed a lot of small communities can't get it.

Mr. ERLICK. Yes, sir. I agree there are two points.

Mr. BROTZMAN. There is an inconsistency.