Mr. BROWN. You don't think that somebody would keep their evening hours free and sell them to Schick to sponsor the boxing matches?

Mr. LINDOW. He would not get the boxing matches. The pay TV stations would outbid him.

Mr. BROWN. I submit that some stations in New York, perhaps more than just one, are going to say those hours are going to be free, there will be a lot of people watching and those people will sell the Metropolitan Transit Authority or somebody else because those viewing are the guys that ride to work on the subway and those are the ones some advertiser will want to get. It is the same reason that not everybody advertises in the Wall Street Journal, in Life or Esquire or in subway cars.

Mr. GOLDBERG. That is assuming the advertiser wants to reach the bottom economic third of the people in New York City who can't afford pay television.

Mr. BROWN. Those people do spend money and do buy things commercially.

Mr. LINDOW. The advertiser does not want to be cut out from that very important middle-class market.

You mentioned you are in the newspaper business. You know your circulation. If it were just limited to that lower segment, it would not be as attractive to the purchaser of advertising.

Mr. BROWN. I will tell you what market he is looking for if you tell me what he is selling.

Mr. LINDOW. That is true. I am talking about the mass commodities that appeal to the mass of people in all income brackets.

Mr. BROWN. They don't want to be cut out of that lower third, either. So they will put a little money into free televesion.

Mr. LINDOW. Maybe they will put more in the newspaper.

Mr. MACDONALD. Thank you very much.

In conclusion, I would just like to correct two things.

I don't have a cabin. It is a house.

Secondly, I would think that the strongest argument you make against yourself is the fact that you say that all these poor underprivileged people who can't afford pay TV are going to go to pay TV, because if your programs are that bad, to paraphrase an advertisement, you must be doing something wrong, because people are not going to pay for a program that is good if they don't have to pay for it unless they are willing to pay for it.

I would think the networks, and I know you don't represent the networks and perhaps you are not the proper person to say it to, but there must be something being done wrong on TV, and I guess radio, that irritates people enough that they are willing to pay for what they are getting free now. When you say that you fear this pay TV will just spread like wildfire—I forget the exact words you used but they had that connotation—then you don't have much faith in what you are doing, yourself.

I should think that the network broadcasters would try to upgrade what they are doing if they are afraid of pay TV. I think if they came up with a comparable type of entertainment that would be successful, it is just the law of human nature that nobody is ready to pay for something that they can get for nothing unless what they are getting

for nothing is so irritating to them that they are ready to pay to get away from it.

You know, like all these ads that you hear about, mouth wash and all, you know, all the rather distatseful things you have to watch.

I would like to put in a word for the networks because nothing much good has been said about them today. I think they do an outstanding job in news coverage and in sports and some other fields. But the vast wasteland that got so overpublicized is there. Have you ever had to be in bed or in a hospital for a day or two and watch daytime television?

Mr. LINDOW. Yes, sir.

Mr. MACDONALD. I agree with you 100 percent when you say that nobody would watch that.

Talking about free TV, they would have to pay me to watch some of those programs. I think I am speaking as the typical listener of TV. On the other hand, as I said yesterday, the program ABC did about Africa and many programs that are done by the networks are superb.

It is like the thing about the girl with the curl. When you are good, you are very, very good, but when you are bad, you are really horrid, it seems to me.

It seems to me that is why people should have the choice to choose whether they want to take something for nothing or they will pay for something, just to get away from the inaneness of some of the things that go on TV.

As long as you go to the least common denominator, there will be a market; I don't know how big the market is going to be, but there is going to be a market for people who just can't put up with a lot of this stuff that is shown on TV. I would think, you know, a sort of plague on both your houses. Every witness who has appeared here has made a good argument. It is true that perhaps things would be siphoned off; I don't know.

The FCC went into rather complicated rules in my judgment. How that would work out, who knows. But, on the other hand, if you would upgrade your product, you would not have any fear of pay TV because, as I repeat for the last time, nobody is about to pay for something that they can get for nothing.

Mr. LINDOW. May I respond to that, Mr. Chairman?

When these programs are siphoned off, and we believe they will be siphoned off, then what will we have left? We have the soap operas that you were talking about, perhaps. We would have our news and public affairs programs, which cost a tremendous amount of money to produce, without the revenue to sustain them.

I think Mr. Adams stated on the first day of these hearings in behalf of NBC they spent a substantial amount of money in that case and I know the other networks do, too, and I know the individual stations do. You would have secondhand programs that have been rerun over and over and over again. You would have very little worthwhile program fare to offer.

Now, these people that you are referring to, sir, in the lower 30 percent economically, have desires, too. They want to see better programs. They want to see the best that they can see and I think they ought to see the best they can see. I think if we are to try to help them

improve their status we have to give them better things. So they will have to go to pay TV to get those if they are denied them because we don't have the financial basis to provide the sort of thing we are providing now, and we hope to improve.

Mr. MACDONALD. I don't think the networks have been losing money lately.

Mr. LINDOW. No; they are not. Believe me, they are not. We are not talking about this year or next year. We are talking about the ultimate effect; what happens if pay TV succeeds, not if it fails. As I said before, if it fails, we might as well all go home and forget about it, if we agree it is going to fail.

Mr. BROWN. I hasten to point out that soap operas got their name from their sponsors and not from their content, and a whole generation grew up on free radio sponsored by soap companies and some others. I happen not to find not too much fault with that. I don't find too much fault with the fact that sponsors ought to be allowed to sponsor things to be made available to the public free. What I am trying to suggest is a combination of these things rather than resist a technological possibility and development that is here.

Now, I am wondering whether CBS' attitude will change if they can come up with a patent possibility that will make a pay TV system available—maybe they have it; I don't know—but I wondered if their attitude would change if they had to pay money to somebody else.

Mr. LINDOW. I don't know, either.

Mr. BROWN. Second-hand programs, "Our Miss Brooks," and some of those things are still floating around on free TV. I prefer not to watch them because I have seen them three or four times before. Some of my kids are delighted with them and I think they are good entertainment for children.

Mr. LINDOW. My point on that, sir, was that they would be even more second hand, if possible, before they would become available because pay TV would have wrung every nickel out of them at the box office before we got them. We know you can play a program a number of times and still command a good audience.

Mr. BROWN. That is a matter of viewpoint.

I think the gentleman who preceded you, if he had leaned on what his real interest was rather than picking an argument out of the air, he would have been able to establish that there are a lot of people who pay box office to see it when it is first run but there are a lot of people who will wait and see it when it is free.

I don't think we are raising a question here as to whether you are going to see good stuff on pay TV and rotten stuff on free TV. I think you are raising a question as to when you will see it.

If you want to see the world series ball game right now, you may watch it on free TV. If you don't have time to see the game until next weekend, you may watch it on pay TV. They are doing this with sports right now. If I want to go to the Firestone open when it is played, I can go to Akron.

Mr. LINDOW. Under the Commission's rules, those could be siphoned off right now and they would not have to wait 2 years or any length of time.

Mr. BROWN. I could spend the money to go see it or I could wait until it is on ABC's "Wide World of Sports." I do the latter because

I don't have the time or money or inclination for the former. But let me ask another question. Is the technology developing in the broadcast industry to such an extent that it will permit more television channels on the spectrum or is that a frozen commodity that is unlikely to change? This is a scientific question.

Mr. LINDOW. I am not an engineer but I do have a little understanding of this matter. I believe the short answer to it is this: There has been suggested from time to time ways in which the bandwidth could be adjusted in order to provide more spectrum space. I haven't yet heard of or seen anybody who has come up with a way in which this could be done and still be sure that we have the same type of high-quality reception we have.

And, No. 2, to overcome the problem of the existing number of sets running into the many, many millions in the hands of the American public without making them obsolete overnight were you to change that. That is the short answer to your question, sir.

Mr. MACDONALD. Thank you very much for your testimony.

Mr. LINDOW. Thank you. I appreciate the opportunity to be here.

Mr. MACDONALD. Without objection the statement of Harry L. Graham, legislative representative of the National Grange, will be included in the record at this point.

(Mr. Graham's statement follows:)

STATEMENT OF HARRY L. GRAHAM, LEGISLATIVE REPRESENTATIVE, NATIONAL GRANGE

Mr. Chairman and members of the subcommittee, the Grange appreciates the opportunity of appearing before this distinguished subcommittee today to express our opposition to proposals for paid TV, and to discuss our reasons for this position.

One of the problems concerning all rural America throughout our history has been that of communications. This is an area in which the Grange has had a consistent interest, beginning with our successful attempts to provide rural free delivery service. We have supported the organization of mutual telephone companies, and later on cooperative telephone services under the REA, and other public and semi-public cooperative endeavors to improve rural communications.

You will remember that we appeared before you concerning CATV. We are not opposed to CATV or to paid TV per se so much as we are concerned that the results of both of these will be the further diminution of the TV coverage which is available to vast sections of sparsely populated rural America. We opposed CATV in the smaller towns because we believed it would siphon off the revenue necessary to keep free television continually beamed into the rural areas. It is with this same thought in mind that we come before you today hoping that this subcommittee, in its judgment, will not approve paid television as a means of mass communications in the United States.

We do not believe that paid TV offers any attractive alternative to free television. In fact, the opposite might be true. Paid television could become so much of a commercial enterprise that it could further deteriorate the quality of TV programs. Paid television would undoubtedly cure some of the problems created by an over-emphasis and increasing frequency of television commercials, but the quality of the programs could very well suffer as a result of this, and we would get a steady diet of "Grade B" movies with considerably less of the kind of news and special events coverage that we have at the present time.

The exception to this would probably be more sports coverage. The prize fights now available to paid TV audiences in movies with giant screens would be available to those on the subscriber list. However, considering the quality of this so-called "sports", especially in recent years, this does not offer much attraction to us. On the other hand, at the present time, free television is bringing us most of the sports spectaculars of general interest to the public, including the Olympics,

the World Series, professional football, ice hockey, road racing and many others.

Another problem is that paid TV could siphon off the best of these programs and leave only the second rate and highly undesirable programs for free TV. This would have the effect of further reducing the quality of television programs which has been a major concern of the National Grange at its annual sessions for the last several years. All across the country, our Grange members have submitted resolutions to their Subordinate, County, and State Granges, petitioning us to find some way to improve the quality of television programs and to keep some of those programs offensive to morals and decency off the air.

Paid television, like CATV, would be available only in urban markets or in centers of population, and the vast rural areas would be shut off from the benefits of these programs, if any benefits were forthcoming.

In the so-called Hartford Report, which suggested $65 a year as a fee for paid TV if it did become an acceptable fact in our urban life, then the available resources to the companies would not be measured in hundreds of millions of dollars, but rather in billions. These companies could very well become "the tail which wags the dog." Since they would be in the realm of private enterprise, they would be considerably more difficult to control in terms of the general welfare and the public interest.

As an alternative to paid TV, we would be of the opinion that it would be much cheaper for the American public and probably considerably more beneficial if there were additional allocations of funds at all levels of government for the expansion of the so-called "educational television" with the word "educational" being used in its broadest sense so that the arts, sciences and humanities might all be included.

My observation of some of the educational programs indicates to me that they certainly are more acceptable in terms of our own concepts of morality in our own home and generally in the homes of our Grange people across the country than either what we are getting today in free TV or what we are afraid we would get in paid TV.

However, to conclude with our initial point, our greatest objection is the possibility that the rural areas would be left in the darkness as far as telecasting is concerned, as they were left in the dark without electric lights and many of the other services for many years which were available to urban America.

Even today, we are suffering from difficiencies of education facilities, health and welfare facilities, general planning and many other of the recognized requirements of urban living which are just as vital to American rural development and revitalization as they are to our urban centers. The loss of any kind of quality television to our rural areas would, in our judgment, be a major disaster at a price which our national welfare cannot afford.

We therefore urge this subcommittee to reject this concept of paid TV until there is conclusive evidence that it can be made available to all who wish it rather than solely to our urban citizens simply by reason of geography.

Mr. MACDONALD. The next witness is Mr. Solomon Sagall, president of Teleglobe Pay-TV System of New York.

STATEMENT OF SOLOMON SAGALL, PRESIDENT, TELEGLOBE PAY-TV SYSTEM, INC.

Mr. SAGALL. Mr. Chairman, my name is Solomon Sagall. I am president of Teleglobe Pay-TV System.

Teleglobe is one of the pioneers in the field of pay TV. It has developed systems for use both over the air and over cable. Teleglobe holds approximately 30 granted patents of which nine are in the United States as well as several patent applications.

I had the privilege of testifying before the House committee on January 21, 1958. I would like to incorporate my statement in the record and I will only address myself to a few basic points.

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

(Mr. Sagall's prepared statement follows:)

STATEMENT OF SOLOMON SAGALL, PRESIDENT, TELEGLOBE PAY-TV SYSTEM, INC.

My name is Solomon Sagall. I am President of Teleglobe Pay-TV System, Inc., whose address is 400 Madison Avenue, New York, New York 10017. Teleglobe is one of the pioneers in the field of Pay-TV. It has developed systems for use both over-the-air and over cable. Teleglobe holds approximately 30 granted patents of which nine are in the United States as well as several patent applications.

I had the privilege of testifying before the House Committee on January 21, 1958.

I will address myself today to a number of specific points:

Why subscription-TV? May I quote in this connection from my testimony given to the House Committee nearly 10 years ago?

"The whole conception of Pay-TV is a natural result of dissatisfaction on the part of the American public, with the substandard, low-level anemic programs that they have been offered for so many years.

"Some of the purveyors of TV entertainment have been treating the American public as immature children, dumping on the airways third-rate material, being only concerned with filling air time.

"Television has largely become a kind of a soporific, a mild narcotic having the effect of preventing the majority of the viewers from exercising their thinking faculties. Television, instead of being the most dynamic, most stimulating force towards creating interest in higher quality intertainment and culture, has had largely an opposite effect."

Has there been a change for the better during the decade that has elapsed? I will claim your indulgence in quoting a few excerpts from an article published in the New York Times of October 23, 1966, by Mr. Jack Gould, its Television Editor, entitled "Almost of Age and No Prospect in Sight":

"How long, then can TV go on saying that it is young, underdeveloped and in need of time to find itself? Two decades is a long period in which to grow up, yet TV is in deep difficulties * * *.

"Television has a deep-rooted problem that is becoming more evident with each passing year. The medium patently does not really require an incentive to improvement in its daily output. It can be wildly profitable by just doing what it is doing, and reap handsome dividends from sustained mediocrity. Even if there were substantial defections of viewers, the remaining audience would be more than enough to make television a sound advertising buy."

The article goes on to say:

"The medium is living dangerously on borrowed time, and reflects unmistakable signs of overwhelming executive fatigue. The tired men cling to their saddles and do not want to step aside for a new generation * * *."

Mr. Chairman, this was an article published in the New York Times on October 23, 1966. A year has gone by. Has the situation improved since? Most emphatically—NO. It is illuminating to quote some excerpts from the same Mr. Gould in the New York Times of Sunday, September 24, 1967. The article is headlined "Balony Sliced Very Thin":

"With the completion of the premieres of the new season, the report card of the networks makes for dismal reading * * * taken as an overall group, the network crop of weekly features is probably the sorriest collection in many years. The bankruptcy of the Hollywood Factory is manifestly complete, and discerning network executives whose thoughts must turn immediately to the 1968–69 season foresee little or no promise in the ideas being advanced for a year from now.

"All in all, the new season is electronic baloney sliced with a minimum of imagination and innovation.

"The current season suggests primarily a weary band of old hands who are exhausting the tried and true formulas and have lost their zest for recognizing that broadcasting—like all affairs of mankind—now faces a radically different new day."

Conventional, or advertiser-financed, TV has had 20 years of growth, 20 years of unparalleled affluence and prosperty and still has been unable to offer anything better to the American public than the same stale diet. Why is the result of the last 20 years so dismal? It is because the networks have had an unhampered, unrestricted monopoly of the nation's airwaves, one of the nation's greatest natural resources. Only competition of the kind that STV may be able to supply could jolt

the networks out of their 20 years of complacency. Such competition is healthy and in the public interest.

The opponents of STV have done their utmost to create confusion and to mislead the public and occasionally the legislators by advancing totally unfounded, spurious arguments against Pay-TV. The basic anti-STV claims are:

a. There is a shortage of spectrum space.

b. There will be a siphoning of programs and talent from conventional or advertiser-financed TV.

c. There will be pre-emption of free air time.

d. The underprivileged cannot afford Pay-TV.

Cold facts and hard figures belie each and every one of these claims.

There is no shortage of spectrum-space in the UHF part of the spectrum. Many of the UHF construction permits are still lying idle—and in some of the major markets. Even affluent grantees are trying to delay putting the stations on the air as long as possible. Harcourt, Brace & Co., the well known publishers, withdrew altogether from the privilege of losing millions in the UHF field. Quite a number of UHF operators are losing money, many are continuing operations in the hope of selling their respective stations to prosperous major companies, who are able to utilize the tax loss.

How about siphoning?

It is high time to explode the bogy of siphoning. Let's consider the economics. Let's assume the most optimistic Pay-TV penetration of approximately 20% of the present 55 million homes, or say 10 million homes. It will take a decade to reach a 20% penetration. Let's assume that one-half of Pay-TV homes or say 5 million homes will be paying on the average $2 a week for programs and equipment leasing charges, or $100 a year. I am using the Hartford figures. This will provide, within 10 years, an annual Pay-TV gross of $500 million. At say $2.50 a week, or $1.30 a year, the gross will amount to $650 million a year. But—ten years from now the gross of conventional advertiser-financed TV, would rise—according to a recent statement by Mr. Walter D. Scott, Chairman of NBC, to $6.5 billion, or exactly ten times the amount of the most optimistic forecast of pay-TV annual take. Is it not logical to assume that the purchasing power of $6½ billion for programs and for talent will dwarf that of $650 million? It may not be inappropriate to mention that the nation's telecasters grossed last year $2.2 billion with pre-tax profits of $492.9 millions. The profits accumulated by the telecasters during the last 20 years of their deadhead monopoly of the public airways provide an extraordinary cushion, which will more than enable them to outbid any offers from the fledgling Pay-TV industry for programs. In light of the above—any assertion that conventional TV needs potection is ludicrous!

The networks are now rapidly invading the field of movie production. Mr. Otto Preminger stated yesterday that he does not agree with the decision of the Motion Picture Producers Association to make representations to the Department of Justice, with a view to preventing the incursion of the networks into movie production. Mr. Preminger welcomed competition in this field as well, as a basic tenet of the American free enterprise system. A CBS–MGM production deal was reported last week, according to which a number of movies will be made for theatrical release and later for network showing. CBS will pay to MGM between $700,000 and $900,000 per picture. It is assumed in the case of Pay-TV that on the average one-third of every Pay-TV dollar will go towards the cost of production. With a $700,000 tab, the gross Pay-TV take will have to be $2,100,000. Taking the price charged in Hartford, in respect to the bulk of the STV programs, namely $1.50 for the entire family, it will require 1,400,000 Pay-TV homes to sustain a movie of that cost. But since on the average no more than one-half of the Pay-TV homes will tune into a given program, it will require 2,800,000 Pay-TV homes to gross $2,100,000. 2,800,000 represents approximately 5.80% penetration of the present TV homes. And I venture to say it will take probably 4–5 years for Pay-TV to reach such a penetration. At $100 per annum, the gross Pay-TV take from 2,800,000 subscribers will amount to $2,800,000, but by that time advertiser-financed TV will be grossing probably 3½–4 billion dollars, with a purchasing power exceeding 12–14 times that of Pay–TV.

CBS has also announced a far more ambitious $21,000,000 production deal with Jack Lemmon and the average cost per movie is expected to be $2.9 million, with Jack Lemmon getting $1 million guarantee per picture against 10% rentals. With the customary overhead added on, each picture has to bring a minimum of

$3,600,000. With two-thirds of this sum expected from theatrical exhibition, each picture will cost CBS $1,200,000. In the case of Pay-TV, it will require a net of 2,400,000 homes paying $1.50 each, which means a total of 4,800,000 Pay-TV homes to be able to afford this type of picture and with a star of the magnitude of Jack Lemmon, or Elizabeth Taylor, or Richard Burton; 4,80,000 homes means almost a 10% Pay-TV penetration.

In light of these incontrovertible figures, could the opponents still honestly and seriously assert that Pay-TV will at any time be able to outbid conventional TV for programs and talent?

The situation might have been different 20 years ago at the inception of TV in this country. If Pay-TV and conventional TV would have had an equal starting chance—20 years ago—the situation might have been different. Today—given every opportunity, and even without any FCC proposed restrictions, Pay-TV would only be able to grow slowly and painfully into a *supplemental* service.

Now, let's deal with the *pre-emption* of air-time. The question is: *Will STV encroach upon conventional airtime to the detriment of the public?* Certainly *NO!* Affluent, prosperous VHF or UHF stations will not go into Pay-TV with all its headaches. It is the independent UHF operator who in the struggle for survival in VHF markets will turn to part-time Pay-TV, in order to *minimize his losses.* Teleglobe estimates that he will have to find $2,500,000 to be able to reach break-even point with 20,000 subscribers. Let's take a *four-station* market, with all the stations in operation. Each station is on the air an average of, say, 16 hours a day, or 112 hours a week; the four stations are on the air for a weekly total of 448 hours. Pay-TV will enable the fifth independent to go on the air much earlier than he would do otherwise. Let's assume the independent will provide as much as 4-5 hours of Pay-TV programs daily. He is *not* taking away anything from conventional TV! The economic viability of his station as a result of part-time Pay-TV will enable him to provide ultimately a hundred or so hours a week. There is really little likelihood that he will be able to use more than half of the airtime for Pay-TV. The other half or, say, 50 hours a week will thus be a *net* addition to free or conventional airtime in the market. Pay-TV will thus *not* deprive the public of the amount of *free* airtime available at present. It will make possible maximum utilization of broadcast channels, at present still idle, or otherwise ineffectively used, in some cases nourished by sub-standard programs, of no benefit to the viewing public at large.

The low-income groups and Pay-TV

In their fear of the competitive element that Pay-TV can bring about, the opponents are assuming the role of the champion of the underdog, namely the underprivileged, low income classes—the 30% of viewing families—who, they claim, will not be able to afford Pay-TV. Let's explode this bogey as well. There are possibly many low-income families who cannot afford and will not be able to afford for years to come a color television set. It would certainly be a nice and generous gesture on the part of the networks to allocate a certain amount of their annual income to providing the low-income families with color television sets for *free.* After all, telecasters have waxed fat over so many years by using the natural resources belonging to the American public—the air frequencies. By the same token, some of the underprivileged 30% cannot afford to pay the sky-rocketing admission prices to the neighborhood motion picture theatres. Would it not be an excellent idea for the theatre owners to provide during certain hours in the day—prime evening hours included—*free* admission for members of the low-income groups?

It is the Teleglobe philosophy, largely shared by other Pay-TV proponents, that subscribers should never be charged more than the price of *one* single admission ticket to a neighborhood theatre. The average American family consists of 3½ persons. Pay-TV will enable the *entire* family, and often friends of the family, to watch a Pay-TV program at home for the price of only *one single* ticket. This will represent a substantial saving to a low-income family. The STV opponents are therefore not prompted by genuine sympathy for the underprivileged, but by a fully understandable desire to protect their vested interests.

As a matter of fact—it is the low income groups that stand to benefit a great deal from Pay-TV. They may be enabled to see via Pay-TV Broadway plays that may not be shown on advertiser-financed TV for ten years or so. Let's take for example a musical like Camelot. It played on Broadway some six years ago. One has to pay on Broadway anything between 15–20 dollars for a pair of seats; add cost of parking a car, and sometimes of a baby-sitter and perhaps of a supper

in town. This may mean an expenditure of $25–30 an evening. Only a privileged minority can afford seeing "live" theatre. But nobody calls this *undemocratic.* Camelot is now—six years later—about to make its debut as a movie on Broadway and probably in selected theatres in major cities—at hard ticket prices, in the range of $2.50–$4 a seat. The selective presentations of the movie will attract a wider audience, but the hard ticket prices may still exclude possibly ¾ or more of the potential moviegoers. Does it not sound rather undemocratic? A couple of years later—dependent upon the picture's appeal—it will reach the screen in the neighborhood theatres, where the average charge is approximately $1.50 a ticket. This creates an additional, much wider level of audiences. But the millions of TV viewers are still deprived of the opportunity to see it. Camelot—or the Man of La Mancha, or Fiddler on the Roof, or My Fair Lady—may not reach the home screen for 10 years or perhaps longer. Pay-TV on the other hand will make it possible for many—including the underprivileged segment— to view these outstanding Broadway attractions shortly after they reach the neighborhood theatres, and perhaps 3-5 years earlier than on advertiser-financed TV. The theatre, by the way, is not being deprived of its steady audience. Moreover, the young will always prefer to go to a neighborhood movie theatre than sit at home. Pay-TV creates a *new* audience level. And 3-5 years later the same Broadway attraction will come on for free on conventional television—with its *mass* audience level.

If STV is successful, then the ⅛ underprivileged will be able to sit at home and for $2–$3 for the entire family and friends see the Man of La Mancha, for $1 or $2 for the entire family, see legitimate Broadway plays and operas, for the price of $1 for the entire family, see Off-Broadway productions, in short everything which is today unavailable for economic reasons, to the very segment of the population for whom the opponents are shedding crocodile tears.

Teleglobe supports the Fourth Report

Teleglobe is here to express its support of the Subscription Television Committee's recommendations to the FCC to authorize nationwide Pay-TV on a permanent basis, as outlined in the Fourth Report. The STV Committee declared that subscription television is in the public interest and benefit, and at the same time decided to impose certain restrictions in order to safeguard conventional or advertiser-financed television against siphoning of programs or pre-emption of airtime. We are of the opinion that conventional television does *not* need any safeguards, does *not* need any sheltering, does *not* need any coddling; it is too solidily entrenched to fear serious undermining of its position. We are, however, willing to accept the FCC proposed restrictions, perhaps with some minor modifications, if the FCC decides, in its wisdom, to make authorization of Pay-TV conditional upon such restrictions.

Let's examine some further objections raised by the opponents:

The opponents claim that there is no proven public demand which would justify FCC authorization of Pay-TV. There was no public demand for conventional. television when it was introduced 20 years ago. There could have been no demonstrable demand for it since the public could hardly have visualized what it was all about. There was no public demand for ETV, or for FM, nor, for that matter, was there any public demand for radio when it was introduced some 40 years ago. It was the duty of the Commission placed as it was in charge of the Communications Act to foster all such new developments; it was the duty of the Commission to look ahead. *Looking ahead* remains the clear duty of the Commission; hence it has accordingly a duty to authorize nationwide Pay-TV *now.*

The opponents are afraid—on the one hand—of the success of nationwide Pay-TV; on the other hand they continue to assert that Hartford was a failure, that there is no demand for Pay-TV and that it will flop. Consequently, they are against FCC authorization. The FCC does not have to be assured beforehand of the success of a particular innovation. There was no guarantee in 1927 that Radio would be successful; there was no guarantee in 1947 that TV would succeed. The FCC allocated some 15 years ago frequencies in the UHF part of the spectrum; the majority of those frequencies remain unutilized and the bulk of the UHF stations that courageously started operations at that time failed. This did not prevent the FCC, aided by means of the All-Channel Set Law, from trying to revive UHF. And still—without part-time Pay-TV, many UHF stations may fail again. Teleglobe accordingly believes that the FCC will be derelict in its duty as guardian of the nation's airwaves if it were not at long last to open the door to Pay-TV *now.*

The Hartford programs

The opponents continue to assert that Hartford failed to fulfill the promise of better and different programs. How could Hartford do better than it did, with all the difficulties and uncertainties of a test operation? It is indeed a miracle in the circumstances that Hartford did as well as it did.

This does not mean that I am satisfied with the performance in Hartford. Quite the contrary: I firmly believe that Pay-TV, if it is to become a beneficial supplemental service in the interest of American TV viewers, will have to do a lot more than Hartford did thus far; it will have to offer more than merely current movies; it will have to evolve a new programming format. If people are willing to pay for "adult" programs, then that is a good enough reason why they should get them, but this type of program will have to be balanced with far more diversified fare.

Marshall McLuhan, the communications expert, made a frightening prediction last week that the United States will have an economic depression in about five years because its youth lacks direction and described "the TV generation" as being "in a slump of human drive and ambition."

Television is one of the most powerful means of influencing the human mind that the world has ever known. We accuse conventional TV of having failed to make adequate, beneficial use of the medium. Twenty years of brain-washing the American public by a fare of mediocrity was bound to produce a negative, paralyzing impact, particularly on the minds of the impressionable younger generation. There is little that conventional TV can do about it. Advertiser-financed TV and mediocrity are as inseparable as Siamese twins.

Can STV do better? It can and it will. I have great ambitions for STV. I firmly believe that STV will be able to evolve a new programing format, that it will be able to create programs that will awaken the mind, programs that will stimulate the brain. . . . And a new generation of creative writers, directors, actors—who have little chance to get ahead in conventional TV—will be attracted to Pay-TV and to its challenge to produce new ideas, new forms. A new approach that will be able to capture the attention of both the older as well as the younger generation will emerge. Not dependent on the advertising dollar, Pay-TV producers will not be afraid to experiment. A new dynamism will be introduced into American TV, and herein lies the great promise and the real future of Pay-TV.

Cultural programs do not have to be synonomous with dullness. Viewers can and will be educated—via Pay-TV to appreciate and desire operas, concerts, ballet and the like. You have to get men like Leonard Bernstein to teach appreciation of music as he used to do—in a dramatic, exciting way—with his masterly introductions to some outstanding concerts. Advertiser-financed TV can no longer do it, since it has to cater to the lowest common denominator in order to sell the wares of the advertisers. Pay-TV is fortunately free from such stultifying shackles! And that is why Pay-TV ought to be given every chance of fulfillment.

The question has been raised in the Sub-Committee hearings whether *one* Pay-TV operation in a five station market—as proposed in the Fourth Report, would not create a Pay-TV monopoly for the particular station. Teleglobe agrees with this point of view. Teleglobe did accordingly suggest in its statement to the Commission and in the oral arguments held last week, to permit competition by authorizing *two* Pay-TV operations in markets with *six* or more TV stations.

Mr. Chairman, the opponents fearing the healthy competition of Pay-TV have done their utmost to mislead the American public. One has but to remember the testimony of Dr. Frank Stanton, head of CBS, before the House Committee on Interstate and Foreign Commerce in January 1958, in the course of which Dr. Stanton pictured the frightening prospect of an average American family having to spend about $480 a year for Pay-TV programs. The figures submitted by Zenith and Teco show an annual subscriber cost of approximately $104 ($65 from programs and $39 from decoder rental and maintenance). This is approximately but ⅛ of the figure given to the Congressional Committee by Dr. Stanton. Teleglobe projections for nationwide Pay-TV visualized, in its statement to the FCC of July 8, 1965 and its Comments of October 10, 1966 a possible gross income from programs and decoder rentals and maintenance of $2.50 a week or $130 a year per subscriber, approximately ¼ of the estimate given by Dr. Stanton. One has but to remember that Mr. Richard Salent, President of CBS News, and at the time a CBS Vice President, in a TV debate on Pay-TV sometime in 1958, dramatically displayed and read to the multi-million TV audience a letter from an old widow who stated that she invested her life savings in the purchase of a TV set

and now with the advent of Pay-TV, she will be deprived of the opportunity to view "free" television. Reference has been made to the misleading campaign of the California theatre owners against Pay-TV. These are but a few examples of the methods to which the Pay-TV opponents stooped in order to "blackent" Pay-TV. All methods were considered fair in the opponents' efforts to kill the Pay-TV embryo.

Pay-TV opponents are fighting progress

Mr. Chairman, the opponents are trying to stifle competition—the very essence of the American free enterprise system. Like King Canute, they are trying to stem the tide of progress. It may be appropriate to mention here the decision of California Superior Judge Irving H. Perluss, who declared that the outlawing of Pay-TV by the California referendum of November 4, 1964 was unconstitutional. Judge Perluss said that he found the success of the initiative was based on a "speculative and illusory evil"—that Pay-TV might destroy free television. "Publicity statements issued by the Citizens Committee during last fall's (1964) campaign hammered at this theme, warning the public that Pay-TV would ultimately corner all the most popular television offerings and leave commercial or 'free' television with less popular programs." "In the final analysis," Judge Perluss said in his ruling, "it would appear that the charges here made could have been made by the radio industry when television was made available for the home, and by the producers of silent pictures on that memorable day when Al Jolson appeared on the motion picture screen and sang in the Jazz Singer. Invention and progress may not and should not be so restricted, at least when they are cloaked with the immunity of that fundamental 'freedom of speech.'"

The opponents are now screaming their heads off that it is up to Congress to settle the issue of Pay-TV. They are hoping for delay and perhaps for a ban of Pay-TV.

The opponents of Pay-TV desire to move the clock back to the year 1683 when the manufacturers of metal buttons for men's clothing succeeded in getting the Virginia legislature to institute a law to prohibit the manufacture of cloth buttons; the law declared the making of cloth buttons a penal offense; it remained on the statutes of Virginia from 1683 to 1721.

We are sure that Congress will have no desire to move the clock back to 1683. We are certainly against further delay, and we pray and hope that the deliberations of this Sub-Committee will enable the FCC to proceed constructively and give—after 14 years of delay and frustration—the green light to Pay-TV. Pay-TV is entitled to its opportunity in the American market place.

Of course there are still many unknowns, many unchartered areas. There were, however, many unknowns when conventional TV started to emerge. No amount of further experimentation on a test basis will bring about additional useful information. Only actual STV operations—on a basis of permanency—is a gradually growing number of markets—can provide the conclusive proof of the ability of Pay-TV to make a constructive contribution to American TV.

Mr. Chairman, may I say in conclusion:

The mere fact of FCC authorization will not bring about overnight nationwide Pay-TV. We are realistic enough to visualize the difficulties in the path of Pay-TV. It will be an uphill fight. Vision alone is not sufficient. Good intentions are not enough. Dedication on the part of Pay-TV proponents to achieving a new breakthrough will be required. Tremendous capital resources will be required. Readiness on the part of the Pay-TV entrepreneurs to risk money and to shoulder losses for possibly years to come will be required. For many it will prove merely "a license to lose money".

If Pay-TV succeeds it will be to the benefit of—

(a) the American public at large,
(b) the millions of viewers,
(c) the UHF broadcasters,
(d) producers of entertainment,
(e) a new generation of writers, directors, actors,
(f) manufacturers of equipment, and
(g) many others who will share in the development and operation of this new industry.

If it fails, nobody will be hurt except its courageous backers.

Mr. Chairman, STV—we claim—is a new, progressive, beneficial force. Its future is in your hands; it fully merits your support.

I thank you.

Mr. SAGALL. I refer in my statement to the effect that a great deal of confusion has been introduced into the subject of pay TV by the opponents and indeed many misleading statements. I think I would like to start with the projection given to us just before I came to this table.

On page 9 of the statement of the Association of Maximum Service Telecasters it is stated:

> Even based upon the revenue figures derived from the Hartford failure, nationwide pay TV could easily have annual revenues of $1 billion, and this with only 16-percent penetration of the United States television homes.

Now I engaged in some simple arithmetic. A 16-percent penetration would mean 8,800,000 homes and with each contributing a total of $104 a year, $65 in program charges and $39 in equipment leasing and maintenance charges—as in Hartford—the gross would be $915,200,000.

This would, however mean 100-percent rating. It would mean that every one of the homes, each of the 8,800,000 pay TV homes in the United States, would be willing to pay a total of $104 a year. But this is perfectly ridiculous.

We would all be very happy—and I think the Hartford figures prove it—if on the average 50 percent of the pay TV homes will pay $104 a year—50 percent. In this way you can immediately halve the figures introduced by AMST just before.

It would mean, not $1 billion annual revenue from pay TV, but half a billion dollars. A little later the AMST statement says that one can project program revenues alone from a moderately successful nationwide pay TV system of at least $1.1 billion by adding $1.25 more a week. That means adding $65 a year. That means doubling the figures received in Hartford from program fees.

Instead of the present Hartford figure of $65 this statement visualizes $130 in program charges. But I believe even more misleading it is when you come to read further that—

> Of these $1 billion, pay TV program revenues alone of at least $550 to $630 million would almost equal the total program expenditures for the three commercial networks in 1966.

The average dollar that will be brought in by any pay TV operator will allocate no more than one-third of the gross receipts for programs. Therefore, the actual figure should be no more than $330 million out of a billion dollars, or, if based on a 50 percent rating, as in Hartford, no more than $160 million out of half a billion dollars.

I need not go into any further examination of the AMST statement.

Now, Mr. Chairman, you just said there must be something wrong with free television if there is a movement toward pay TV.

I would like to quote one sentence from my statement to the House Commerce Committee made 10 years ago:

> The whole conception of Pay-TV is a natural result of dissatisfaction on the part of the American public, with the substandard, low-level anemic programs that they have been offered for so many years.
>
> Some of the purveyors of TV entertainment have been treating the American public as immature children, dumping on the airwaves third-rate material, being only concerned with filling air time.

It is interesting to quote almost 10 years later from an article in the

New York Times by Jack Gould, its television editor, on September 24, 1967. The article is headlined "Baloney Sliced Very Thin":

> With the completion of the premieres of the new season, the report card of the networks makes for dismal reading * * * taken as an overall group, the network crop of weekly features is probably the sorriest collection in many years. The bankruptcy of the Hollywood Factory is manifestly complete, and discerning network executives whose thoughts must turn immediately to the 1968–69 season foresee little or no promise in the ideas being advanced for a year from now.

This is the explanation why there is growing dissatisfaction with the present-day commercial TV programs.

May I deal now for a moment with a vital point, the quality of the Hartford programs.

Hartford, I think, did as much as it could under the difficulties and uncertainties of the test operation. Incidentally, I would like to reply to a question posed here: Why are there no other pay TV tests?

The Teleglobe System was approved for a pay TV test by the Commission in Denver, Colo. We did grant a franchise to the firm of McFadden-Bartell, publishers and operators of radio stations.

Because of the stringent FCC regulations governing tests, our franchise holder was unable to proceed with the test, after having sunk into it almost a quarter of a million dollars. They had difficulty at the time of getting programs from motion picture producers.

All this has been set out in briefs filed with the Commission. I think a great deal of credit is due to our competitor Zenith and RKO-General who had the means and courage to go ahead with their Hartford test.

But anybody else who would have contemplated to go into further tests and experiments really should have had his head examined.

Now coming back to the Hartford programs, that does not mean——

Mr. MACDONALD. Excuse me, sir. Would you mind expanding on that?

Mr. SAGALL. There is not the slightest chance of making a success with an experimental operation under the test conditions imposed by the FCC.

Mr. MACDONALD. Is that why you backed out of Denver?

Mr. SAGALL. That is why our franchise holders were unable to get going.

Mr. MACDONALD. What was the relationship between your company and the franchise holder?

Mr. SAGALL. We granted them a franchise under the Teleglobe patents.

Mr. MACDONALD. You charged them?

Mr. SAGALL. Yes. We would have charged them a royalty of 5 percent. It is a public document filed with the Commission.

Mr. MACDONALD. I haven't seen it. That is the only reason I have asked.

Mr. SAGALL. I am explaining that this information is public and in the same way, as the Zenith franchise contract granting similar terms in respect to Hartford to RKO-General, is on file with the Commission.

Mr. MACDONALD. Why would you have to be out of your mind?

Mr. SAGALL. Not we but anybody who would be willing, as McFadden-Bartell did at the time, to spend to the tune of a quarter

of a million dollars. McFadden-Bartell had a great deal of support of public opinion in Denver.

The Denver Post came out in favor of giving every possible help to McFadden-Bartell to introduce pay TV in Denver. They stated it would make a valuable contribution to Denver's cultural life. They felt there would be an improvement in Denver television programs as a result.

Indeed, I don't want to tire you, Mr. Chairman, but I have here in one of the briefs filed with the FCC the Denver editorial. May I continue?

Mr. MACDONALD. Yes, sir, but I am not really sure why they backed out.

Mr. SAGALL. First of all, they had difficulty in getting programs. They were starting in 1963. They were supposed to start in Denver a year or so after the Hartford operation started. Hartford had difficulty in getting motion pictures. They only got them from a couple of companies, Warner Bros., I believe, and perhaps one or two other companies.

The majority of the motion picture producers refused to supply such programs. Hartford and RKO-General had to make representations to the Department of Justice before they were able to get the other motion picture producers to fall in line.

When McFadden-Bartell came to the same motion picture producers who originally were willing to supply Hartford, they refused.

They said—

> We have taken a chance on Hartford; we antagonized the theater owners. Let some other motion picture company take a chance in Denver. We don't want to bear all the criticism and the stigma for supporting pay TV.

Mr. MACDONALD. How many sets of whatever you call them did you contemplate to lease to these people in Denver?

Mr. SAGALL. The original statement filed with the Commission set an experimental ceiling—remember, it was only experimental—of 2,000.

Mr. MACDONALD. I don't quite understand why the motion picture people would get that exercised actually, just 2,000 families involved.

Mr. SAGALL. The theater owners are a very powerful body. They were at that time even more than now, the bread and butter of the motion picture producers.

In the intervening years the sale of motion pictures to television stations has been gradually increasing. Of course, they have now two customers, theater owners and commercial television. Both of them today are, of course, against pay TV.

I would like to deal with the Hartford programs. I am not satisfied with the performance in Hartford. Quite to the contrary, I firmly believe that pay TV, if it is to become a beneficial supplemental service in the interest of American TV viewers, we will have to do a lot more than Hartford did thus far. We will have to show more than current movies.

We will have to evolve a new program format. If people are willing to pay for adult programs to which reference was made the other day, that is good enough reason why they should get them but this type of program will have to be balanced with a far more diversified fare.

I would like to quote Dr. Marshall McLuhan, the communications expert who made the other day the frightening prediction that the United States will have an economic depression in about 5 years because its youth lacks direction and described "The TV generation as being in a slump of human drive and ambition."

Television is one of the most powerful means of influencing the human mind that the world has ever known. We accuse conventional TV of having failed to make adequate, beneficial use of the medium. Twenty years of brainwashing the American public by a fare of mediocrity was bound to produce a negative, paralyzing impact, particularly on the minds of the impressionable younger generation. There is little that conventional TV can do about it. Advertiser-financed TV and mediocrity are as inseparable as Siamese twins.

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Cultural programs do not have to be synonymous with dullness. Viewers can and will be educated—via pay-TV to appreciate and desire operas, concerts, ballet, and the like.

I am not impressed by the way by the lipservice contribution made by some of the networks to bringing in an occasional concert or an occasional ballet. The history of the ballet is rather illuminating.

A company in Britain called British Home Entertainment, Ltd., started making programs for pay television for Britain and the American market. They are now a part of a British experimental pay television operation called Pay Television, Ltd.

Incidentally, in a part of London, Westminster, I think they only started about 18 months ago, in January it will be 2 years, and I think the last figure I had was that they had 9,000 or 10,000 subscribers.

They started in February in a part of Sheffield with only 3,000 subscribers. The experiment has been working so well that there is a firm belief that the British Government is going to approve permanent pay-TV licenses, possibly at the end of this year or early next year.

Now this British Home Television, Ltd., produced the Royal Ballet with Margot Fonteyn and Rudolf Nureyev. They were unable to sell it here. By that time the California operation was suspended. They were going to sell it to California.

I don't remember whether Hartford did show it or not, but the British company needed money. They succeeded to sell it to CBS. CBS kept it in cold storage for a year or 2 years until Christmas 1965 and then during the Christmas season they offered it as a sustaining program.

I would not call that a particularly remarkable contribution to cultural TV.

You have to get men like Leonard Bernstein to teach appreciation of music as he used to do—in a dramatic, exciting way—with his masterly introductions to some outstanding concerts. Advertiser-financed TV can no longer do it, since it has to cater to the lowest common denominator in order to sell the wares of the advertisers.

I want to make only a couple more remarks. I know that members of the subcommittee will get very impatient if I keep them beyond the lunch hour and impose on them involuntarily a fast on which I may have to—not may but will embark on a little later this evening after sunset.

I did not mention anything in my statement about sports. Of course, I think that the pay TV proponents, those who preceded me and those who will come after me will make out a good case that there will be no siphoning of programs of motion pictures and the like, that there will be no preemption of air time.

As members of the subcommittee know, there is plenty of space in the air spectrum; the underprivileged will not suffer; just on the contrary.

In this respect I don't know whether I am permitted to dare to criticize a Congressman of the eminence of Mr. Celler, when he took up the championship of the underprivileged.

Indeed, when he came into this room yesterday I was almost shivering because I remember, I believe, there was a bill introduced by Congressman Celler some years ago to punish pay TV operators with substantial fines and with jail sentences up to 5 years. So I was somewhat worried about it.

But I believe that we have made out a good case and I don't think we need to belabor this point. The underprivileged will only benefit from pay TV.

But I would like to deal now with sports, the question of outbidding for sports. Again figures were mentioned here yesterday that in New York City 500,000 homes would install pay TV and would each pay a dollar and obviously they would outbid commercial TV for the sports.

First of all, that would assume a rating of 100 percent for every pay TV home. But I unerstand that sports events, pro football does not get a higher rating today than 10 to 14 percent, even when it is offered for free.

So why come up with those fantastic, indeed, I woulld say ridiculous, figures?

I assumed in my statement figures, most optimistic ones, that in 10 years we will have 20-percent penetration, more than 16 percent suggested by AMST, of which only half will be paying. I take the Zenith figures of $2 a week, or I take slightly higher figures of $2.50 a week, between $100 to $130 annually that will give pay TV a gross of from $500 to $650 million a year 10 years from now.

Now, Mr. Walter D. Scott, the chairman of NBC, predicted a couple of weeks ago that 10 years from now the gross billings of advertiser-financed TV will reach $6.5 billion.

Let us take last year's pretax profits of commercial television: $492 million on billings of $2.2 billion. That means 22 percent. On $6.5 billion the pretax profits will rise to almost $1.5 billion.

Pay TV 10 years from now, even with my higher figure, will gross $650 million; let us take the same 22-percent pretax profits. The pretax profits will reach $143 million on the maximum optimistic projection of pay TV 10 years from now. This will compare with $1.5 billion of pretax profits of commercial television. Would they really in the circumstances let sports events go to pay TV? It would really be ridiculous.

Now I would like to make an additional observation. Mr. Chairman we think that no restrictions by the Commission are really warranted or required but we accept them and, therefore, if it would appear that the 2-year provision of not showing on pay TV sports which have been shown regularly, I am quoting from the third report: "Sports events may not be broadcast on STV which were regularly televised in the community within the 2 years preceding proposed STV broadcast," is not adequate, if there is still any fear that the public may be deprived of the free sports events, I, for one, on behalf of my company would not object to even a more stringent provision on the part of the Commission.

Maybe the Commission in their wisdom will decide then to increase it from 2 years to 3, maybe 5 years. Now would there be sufficient money on the part of all the pay TV entrepreneurs in the country then to outbid the networks for the sports events? I think that I do not have to belabor this point any more.

I would like to refer to one question raised by one member of this subcommittee. With only one pay TV operation in a given market would there not be established a strong monopoly for this pay TV station?

We agree.

We made the suggestion to the Commission to authorize two pay TV operations in markets with six stations or more. And all the major markets have six stations or more.

Mr. BROWN. Mr. Sagall, may I interrupt you at this point?

Mr. SAGALL. Please.

Mr. BROWN. There are two principles here that I think we ought to be concerned with.

One is whether or not you are penalizing a portion of the stations already on the air, by not permitting everybody that wants to go to STV.

Then the other principle is this one of trying to encourage as many stations as possible to go on the air in an area where the advertising dollar has been pretty well sopped up by the stations which are on the air and the only way perhaps to get a new station on the air is with the principles of STV.

Would it make sense to you if the Commission were to say in its rules that STV is available only to stations not now on the air at this point for a certain time?

In other words, say, a 3-year or 5-year permission on that basis, and then to open STV up to anybody who wishes to go into the field including every station in the market if they want.

The idea I am suggesting here is aimed at increasing the number of stations on the air by giving the STV to new stations and then eventually not limiting STV to the stations in the market? Do you follow my thought?

Mr. SAGALL. I follow you, Mr. Brown. However, there is a big problem in it. Fifteen years ago or so the Commission allocated many frequencies in the UHF part of the spectrum. Some people jumped into them hopefully and the overwhelming majority lost money and they had to go off the air.

Now there are today many markets where there are UHF operators, independents, who are losing money. If pay TV were to be limited to stations not yet on the air today would get an opportunity to have viable stations and those who pioneered and spent millions of dollars in UHF and are still losing money would be deprived of it, there is a danger they would get off the air.

Mr. BROWN. Would you prefer then to see the STV available to everyone in the market? Why the limitation? I am not sure I follow you.

Mr. SAGALL. Mr. Brown, I would say that no affluent operator, no one who is making any money, will want to go now into pay TV. It does require a lot of money to engage in the franchise operation—$2.5 million, maybe $3 million.

Mr. BROWN. I did not understand. No affluent operator will want to go into it.

Mr. SAGALL. Affluent will not, certainly not, not until the success of pay TV is proven over a period of 5 or 10 years, not until some of the pioneers break their bones in the process. I happen to be a pioneer somewhat. I don't happen to have the resources of some of my major competitors ,and it is a very hard task to be pioneering. Therefore, the same would apply to the UHF operators.

Let me give you an example that right now in New York there is one construction permit and they are trying to sit it out as long as possible on the construction permit.

All the people, even major companies who have the means, are trying to sit as long as possible on the construction permits.

New York has one construction permit and it may be a year or two before the station will be on the air. There are two others which are losing money, UHF. One is privately owned, the other one is the city of New York owned, station 31. Its cost of operation is $1.1 million a year.

The taxpayers of New York City are worried. Very few people are tuning in to that channel. It is quite possible if pay TV is authorized the New York municipal authorities may want to use it part time. Chicago has two stations which are losing a lot of money. There is also a construction permit and the grantees are trying to delay going on the air as long as possible. I have information on the situation in other major markets.

Mr. BROWN. I accept the principle that drowning men clutch at straws. So maybe a station that is losing money will look at STV and decide that that is the way out and invest in it. But it seems to me that the person who does the investing will invest on the basis of one reason or another of all the arguments that we have heard, that there is a great deal of demand or there is no demand.

You have modified the statement of the gentleman who preceded you, Mr. Lindow, to the extent that you think there will be some failures.

I am not sure whether you are right or he is right or somebody else is right. If it is not a success and there is no demand for it, then the whole thing will fall of its own weight. I don't think that is the issue that we have to determine—how much he is going to make or what prospect there is for a quick and easy way of making money.

I don't think that is the issue. The issue is whether or not it offers a possibility and a broadening of the opportunity which viewers have to see a selection of programs. I would suggest to you that if pay TV is quite successful that Congress and the FCC ought to permit any station, which wants to, to get into it, any network that wants to get into it, so that competition will ultimately bring down the prices of pay TV to the consumer and also so that they can make a little money to have the opportunity to do public service programing.

Would you agree with that?

Mr. SAGALL. I agree wholeheartedly. I think ultimately after the pay TV pioneers of today, if they are successful, I hope they will be successful in proving that it is a paying proposition, certainly some commercial broadcasters may want to go into pay TV unless they feel that revenues from part-time advertising are more lucrative.

On the other hand, I feel this is a point that can be safely left to the Commission and, of course, to Congress.

I remember when I read economics in London, where I lived before, I heard a famous authority on the British Constitution say: "Parliament is all powerful; it can do everything except turn a man into a woman and a woman into a man."

I think this goes for the Congress as well. Congress is all powerful and 5 or 10 years from now there may be all sorts of different approaches and expansion and so on of the whole broadcasting situation, that will have to be considered.

But the important point is, and that is why I feel we are here today, to see that this young fledgling of pay TV is not suppressed before it is given a chance to prove something. The danger is here that the opponents have combined and they have terrific resources and very powerful lobbyists and they are trying to kill—by the bill of Congressman Dingell—pay TV before it is even given a chance to emerge.

There I see is the great danger for the development of broadcasting in the United States. If I may, I would like only to refer in conclusion——

Mr. MACDONALD. Obviously, that British parliamentarian never heard of Denmark. Perhaps it is not possible in England but in other places it is.

My question specifically is: Do you feel that it will be possible to have two or more pay TV networks?

Mr. SAGALL. Networks? I think, Mr. Chairman, sooner or later there will emerge, I believe, an association of the UHF, largely pay TV operators, which would be the foundation for a fourth network.

I think it could easily arise in the first 5 years of pay TV operation but I don't know that it would immediately lead to a fifth network.

Mr. MACDONALD. If the Congress does permit pay TV to happen don't you think it is almost necessary that there be a network to be successful? You have already talked about how difficult it is for a station to operate in this field.

Would there not have to be a network to be successful? By network I mean interconnection.

Mr. SAGALL. I am sure something like this will have to happen. Since I visualize that there will be attracted to pay TV a new generation of directors and producers and actors and so on, they will not want just to work, it would not be economical to sell it to just one pay TV operation.

Therefore, there would have to be a number of customers. Indeed when I was referring to a new programing format I was not just indulging in fantasy. I personally and I am sure the other pay TV proponents had discussions about such programing—indeed I had many discussions with one of the leading talent agencies how to get about it, how to start with Broadway productions.

The programs will have to be sold to a number of stations and therefore we do have immediately the foundation of a pay TV network.

Mr. MACDONALD. I happen to agree with you that it will have to be more than one or two stations in operation to have any chance of financial success. My original question was, Do you think that there is room in this field for, let us say, two or more types of systems as a concrete example?

Mr. SAGALL. You mean technical system?

Mr. MACDONALD. I know that Zenith has one. I know that you have one.

Mr. SAGALL. There is also Skiatron and there is Telemeter.

Mr. MACDONALD. We will hear from them later. Do you think it is feasible to have—you know, it is sort of like having a telephone, it is not quite feasible to have two telephone systems in your house because half of your friends would have one cable and the other half would have a second cable. Don't you think that this lends itself in some ways to having just one system preempt the field?

Mr. SAGALL. Mr. Chairman, the Commission in rulemaking proceedings posed this question. Now the Commission decided against a single nationwide system. Therefore, we all have the same chance——

Mr. MACDONALD. Excuse me, sir. I did not understand.

Mr. SAGALL. The Commission recommended in the fourth report against introduction of a single nationwide system. This would have created possibly a $1 billion monopoly for one pay TV manufacturer or developer of a system. Therefore, everybody, all the four systems known today, there may be others, will have an equal chance of competing in the marketplace and trying to grant franchises for their respective systems.

The question you have asked, Mr. Chairman, refers to another point, namely, could there be in one given market more than one system.

Mr. MACDONALD. Right.

Mr. SAGALL. Now we, like the other pay TV proponents, have said we don't object to there being more than one system even in one market, but we did indicate that we think in practice it will not work. The practical experience will mitigate against it. Namely, is it not quite like having two telephone systems.

I believe that at one time Philadelphia had two telephone systems many years ago. One was an independent, one was Bell, and many subscribers had to have both systems installed.

What would happen is that if Zenith has a better sales organization they will go into a given market. If Teleglobe has an efficient sales

organization we will get into some markets. Now, if there is a second station which wants pay TV and if the Commission should authorize it, they can join; there is no technical difficulty in the second station joining the Teleglobe or the Zenith pay TV local network for that purpose.

Therefore, I do tend to agree, much perhaps to my regret, that in a given market it will not probably be practical to have more than one technical system.

Mr. BROWN. If the gentleman will yield, is the analogy more like the analogy on the color systems? I understand the FCC some years ago had to make a decision on which color system they would permit or encourage because it related to both broadcast and receiving of color and that they finally went with the system that was basically an RCA system as opposed to the Columbia Broadcasting System.

Is this the same kind of thing that you think we will get into? If this is broadly available and not restricted will this likely be built into the set in some way so that you can get your free or pay?

Mr. SAGALL. I don't think the analogy will hold good. The decoders of the various companies are different and the billing and collection methods are different. By the nature of things many members of the subcommittee have been referring to a coin in the slot. The majority of pay TV proponents are not going to use that. So there are differences in the systems.

Therefore, I don't know whether we could combine into a uniform decoder. I am not talking of patent arrangements. Those would have to be worked out.

The other question raised was about making it part of the television set. This would not be practical as long as pay TV is not universal in every American home. Moreover, under the FCC regulations the potential pay TV subscriber will not have to buy the decoder.

Mr. BROWN. Are you suggesting that if there are three networks in this operation there might have to be three different decoders installed?

Mr. SAGALL. In the home. There need not be if there is only one technical system authorized in the market. It could be done and I believe the Zenith representative, Mr. Wright, explained it the other day. Let us say that there is a pay TV operation on channel 4 and over an independent channel 31 in New York City and they use the Teleglobe system.

Therefore, the program is encoded by means of the Teleglobe encoder at the channel 31 transmitter. Let us say there are x number of homes in New York City which will have decoders. Now comes NBC. They would like also to use the same local pay TV network for the already installed homes for showing the program of theirs for pay. We could easily encode it at our transmitter or we could give NBC a Teleglobe encoder at their transmitter to encode the program and everybody sitting at home could tune into either channel 31 or channel 4, and there could be simultaneous transmission of two programs.

Now I may say in conclusion one more word. I offer my apologies for being perhaps late.

I would like just to refer to a little historical item. I have a son who is a historian. He dug out for me a very interesting observation that in the year 1683 the manufacturers of metal buttons for men's clothing succeeded in getting the Virginia Legislature to institute a law to pro-

hibit the manufacture of cloth buttons. The law declared the making of cloth buttons a penal offense.

It remained in the statute of Virginia from 1683 to 1721. I hope, Mr. Chairman, that you and members of the subcommittee will agree that we should not turn back the clock to the year 1683.

Thank you, Mr. Chairman, for your patience.

Mr. MACDONALD. Thank you very much for a very interesting presentation. As a matter of fact, I think that historians are probably right and cloth buttons are probably coming back.

Mr. SAGALL. Thank you.

Mr. MACDONALD. With this the hearing will have to be adjourned until Monday morning at 10 a.m.

(Whereupon, at 1:25 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Monday, October 16, 1967.)

SUBSCRIPTION TELEVISION

MONDAY, OCTOBER 16, 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 2123, Rayburn House Office Building, Hon. Torbert H. Macdonald (chairman of the subcommittee) presiding.

Mr. MACDONALD. The hearings will come to order.

The first witness is Mr. William Putnam, accompanied, as I understand it, by Mr. Stevens and Mr. Firestone.

STATEMENT OF MARTIN E. FIRESTONE, COUNSEL, ALL-CHANNEL TELEVISION SOCIETY

Mr. FIRESTONE. Mr. Putnam and Mr. Stevens did not make it down, Mr. Chairman. I will appear.

My name is Martin E. Firestone and I am appearing today as counsel for the All-Channel Television Society, an organization representing some 100 UHF television licensees and permittees.

UHF operators support the proposition that the Federal Communications Commission has the authority to provide for a national subscription, pay, television service. In general, they believe that the authorization of such a system will, under proper regulatory conditions, aid in the economic development of marginal UHF stations in the larger television markets; and will encourage the lighting up of presently dark UHF allocations.

In reaching this conclusion, however, UHF operators are aware of several unresolved questions concerning subscription television which can drastically condition their conclusion.

First, there is no real exidence that a public demand exists for a subscription television service. They are aware of this in the same degree that there was no way of ascertaining whether there was initially a public demand for radio service or for television service. You had to take your chances and get in before you know whether people were going to buy your service. Therefore, they are aware that UHF operators entering this phase of broadcasting will be engaging in a highly speculative operation.

Second, subscription television, regardless of attempts to the contrary, will, to a degree, be a competitor of over-the-air free broadcast services. Subscription television will compete with the over-the-air free services for both audience and program material.

This is an unavoidable conclusion. Anybody who watches subscription service will not be watching over-the-air service. The lat-

ter competition will become more acute as program material becomes in even more short supply.

Third, if subscription television is a competitor of over-the-air free services, will its entry into the national television distribution system be accompanied by appropriate regulatory safeguards?

If subscription television is to compete with existing over-the-air broadcast services, then it should compete with them as an integral part of the national television distribution system; that is, it should be subject to the same FCC rules, regulations, and policies to which the existing stations are subject.

The impartial imposition of these rules, regulations, and policies is not required solely by the dictates of fair competition; it is the only means by which subscription television can be truly tested with respect to public demand and economic viability.

Spokesmen for subscription television interests assert that their systems can make an important contribution to the total television service available to the public; that it can supplement and enhance service by providing programing not available through regular television facilities. This assertion can be put to the test only if subscription television is authorized to operate under the same regulatory conditions as existent television facilities.

Thus, if subscription television is proposed for a particular market, let the system demonstrate to the FCC, as television broadcasters are now required, in their applications for construction permits, renewal applications, and applications for assignment of licenses, how it proposes to serve unmet programing needs and interests in that market.

Let the subscription system demonstrate exactly what programing is not being provided the community and how it intends to fill this void. Once these representations are made to the FCC by the system, the subscription system, if it is authorized, should be held accountable to the FCC for failure to provide service in accordance with its representations.

A consistent issue before the FCC has been whether or not more than one subscription service should be authorized in any given market. Again, were the FCC to apply its existing television rules, regulations, and policies, the matter could be easily and practically resolved. If two systems are proposed for a market, let those seeking the authorization demonstrate to the FCC, as broadcasters are now required to demonstrate, that the market can support more than one system or in a comparative hearing afford them the opportunity to show the FCC which system will serve better the public interest.

By using its existing rules and regulations, the Commission can also deal effectively with the problem of program "siphoning" which has been a matter of sharp discussion. Subscription television systems should be licensed by the FCC just as television stations are now. The programing representations which they make to the commission to justify their authorization can be made conditions of their license. Then, if a subscription television system fails to adhere to its programing representations and commences to "siphon" programing to an unconscionable degree, the Commission can act to revoke or fail to renew the license.

The proponents of subscription television contend that it has a valuable contribution to make to the national television system. Opponents

of the service argue that there is no demand for subscription television and that it will only provide that which is, or will be, available from commercial television, educational television, and the new corporation for public broadcasting. ACTS is not prepared to tell this committee that one side or the other holds the whole truth.

We are, however, prepared to state that we support authorization of subscription television service so that it may have a chance to prove its value and viability. If in competition with existing facilities subscription television services can obtain subscribers and flourish, then obviously it is providing a service the public wants and for which it is willing to pay.

If the systems cannot obtain subscribers, then it is equally clear that it is not providing a service desired by the public.

But this competitive, marketplace test can be of value only if the subscription services compete on exactly the same footing as the existing facilities.

The FCC's proposal for authorizing subscription television does not provide the basis for a true competitive test of the service's public value and economic viability. Rather, it creates subscription television as a form of regulatory hybrid, within the Commission's rules for some purposes outside the rules for others, in what appears to be an attempt to shoehorn into the national system a new service for which there was no clear evidence of public demand.

Establishment of subscription television as a special form of television service will prevent proper assessment of its true role. The opponents of the service will contend that it survives only because of the special treatment afforded by the FCC's rules. Proponents will argue that the service has never reached its potential because of the limiting impact of the rules. In all of this it will be the public which is most directly affected.

There is no question but that the FCC's authorization of subscription television service represents a major development in the national television distribution system. While the FCC has the jurisdiction to act, ACTS believes that it must be the role of the Congress to insure that the step is taken with all the safeguards appropriate for such an undertaking. It must insure that the FCC takes no half measure in authorizing this service but utilizes the full scope of its regulatory authority to insure proper accommodation of the new service into the existing system to the ultimate benefit of the public. The FCC's present proposal does not accomplish this goal.

Our concern for the establishment of conditions for a true competitive test between subscription television service and existing free facilities leads to one additional but crucial point. Subscription television must be clearly and unequivocally limited for over-the-air UHF use and not be authorized for use by community antenna television (CATV) systems.

The reason for this position is twofold:

A true test of the viability of subscription television cannot be obtained if the service is to be subsidized by the revenues of CATV systems which derive their revenues from the sale of programing being broadcast by free commercial facilities. There is, of course, the factor that broadcasters are naturally repugnant to see the programing they pay for used to support a competing service.

Limiting subscription television to over-the-air UHF facilities will provide economic support to these UHF stations—assuming subscription television is successful. This will result in the public not only obtaining a subscription service, but also additional free service. For the UHF stations engaged in subscription television service will not do so on a ful-time basis. When not broadcasting the subscription service, they will be providing free television service which in part will be subsidized by revenues from the subscription programing.

On the other hand, use of subscription television by CATV systems will not carry this collateral benefit. CATV sells every facet of its service; it provides nothing for nothing.

Should Congressman Dingell's proposal which would limit television on the basis of FCC jurisdiction in this area and which would effectively prohibit it by being utilized by over-the-air facilities, this proposal would not eliminate the possibility of purely wire, intrastate pay television operations outside the jurisdiction of the FCC and probably subject only to limited and ineffectual regulations by the State and local communities.

Thus you have the problem of siphoning and consequent deleterious effect on local stations.

I would rather see it come within some Federal regulatory scheme under FCC jurisdiction and the supervision of the Congress than leave it to a purely ad hoc State-by-State regulation of intrastate wire systems.

Additionally, and perhaps from the standpoint of the public the use of subscription television by wire systems will not provide the maximum benefit to the public because on a CATV system there will be no means by which that subscription television service can support a free TV service. CATV systems charge for everything they provide regardless of its source and therefore we feel that a strong public interest determination with respect to pay TV as it is now proposed is its ability to provide an economic base for new and additional free television service.

This is why we feel that to promote free service, subscription service should be limited to the use by the ultra high frequency stations.

That concludes my statement, Mr. Chairman.

Mr. MACDONALD. Mr. Broyhill.

Mr. BROYHILL. What do you mean by this last sentence? You say that CATV provides nothing for nothing.

Mr. FIRESTONE. That is correct. Their service is a pure pay service. There is no, shall we say, free service provided.

If you don't pay, you don't get a service, period. If you put subscription television on CATV, since you have to pay for all services, pay TV is not going to generate income which will provide additional free service. That revenue will not flow to a local station which may be carrying subscription television for 3 or 4 hours a day and doing free programs the rest of the time as they did in Hartford.

Mr. BROYHILL. As I understand your position, you are in favor of subscription TV but through another route, through another way of doing it than through the proposed rules that we have seen published.

Mr. FIRESTONE. Our membership agrees that the rules are ineffectual, that they are totally incapable of being properly enforced, and

they would create pay TV as an odd sort of animal, as a result of which you will never get a true test of whether it can survive.

I do not think that we should have this strong set of restrictions on its ability to compete in the sense of what programing they can carry, what hours they can operate, where they can operate. I think those determinations can be made more properly by the marketplace. I do think that the FCC jurisdiction should be utilized to create a general scope of operation which will insure that all parties going into the arena go in properly equipped and equipped in the same manner and not permit one side or the other to carry a horseshoe in its glove.

I think without this free competition within the present framework of the Commission's broadcast policies, pay TV is not going to get a fair test.

Mr. BROYHILL. I thought the proposed rule wants the pay TV station in Hartford to permit free TV.

Mr. FIRESTONE. Yes; that would be a flat prohibition. I don't think that is the way it should be handled.

Mr. BROYHILL. I think more should be approved.

Mr. FIRESTONE. That is true. I think a question should be resolved under the Commission's broadcast regulations.

In a market where an applicant wants to add an additional broadcast service, an existing station in that market can raise an objection that the entrance of a new service will adversely affect them economically and that this will result in a deterioration of program service to the public.

Well, the Commission permits both the applicant for the new facility and the objecting existing facility to thrash it out and then on the basis of the evidence the determination is made whether or not the market can stand the additional service. I think this is the same way the question of whether one or two subscription services should be permitted in a particular market can be resolved rather than just flatly prohibiting the entrance of a second service.

I am sure New York could probably stand more than one service and probably some of the other larger markets.

Mr. BROWN. Will you yield at this point?

Mr. BROYHILL. Yes; I will be glad to yield.

Mr. BROWN. Is there a presumption of the FCC at that point in your experience in favor of expanding channels available to viewers? Isn't that the policy of the Congress, the FCC, and this committee?

Mr. FIRESTONE. Yes; it has been very rare that the Commission has denied the entrance of an additional service if the facility is available. It has been somewhat more stringent where someone is asking, say in the television field, to put in a totally new channel that was never allocated there to begin with.

But there is a general feeling on the part of the Commission—I would not say it is the policy, but the trend has always been to expand the service unless a very clear-cut showing was made that the additional service would result in a general deterioration of service to the public.

Mr. BROWN. Thank you.

Mr. BROYHILL. Thank you, Mr. Chairman.

Mr. MACDONALD. Mr. Brown.

Mr. BROWN. I would like to pursue this particular point.

Do you think it would be appropriate, if the FCC makes this presumption under normal usage (some markets in Texas notwithstanding), that the present STV regulations they have made are proper now but that it might be modified so as to broaden the STV action in certain markets later on?

What I am saying is this. We don't know what STV may do to commercial stations on the air at present. This has been one of the great issues discussed in this hearing, that STV will have an adverse effect if it is highly successful on both talent and programs available and also on the viewing audience so that advertisers won't want to continue to advertise when put up against something that has a high box-office appeal.

Do you think it proper that the FCC has written a decision into its anticipated rules allowing only one STV station in a five-channel market? Perhaps, after it sees what happens, the FCC will open it up to more STV stations in those markets?

Mr. FIRESTONE. No, sir. I would not say that this is a proper determination at this time because I am aware of UHF stations which are the fourth stations in four-station markets, where there are three VHF network-affiliated stations and a fourth UHF station, an independent, these stations are suffering economically at this time for many reasons. They might very well feel that the way for them to develop their total program service would be to take a subscription television franchise in the hopes of generating additional revenue to support their operation.

Mr. BROWN. What about markets that presently have two commercial stations?

Mr. FIRESTONE. If there are two, it would mean that there is a very strong possibility that the third station—the third station being UHF—will obtain a network affiliation, which will have a dramatic impact on its ability to obtain revenues. For various reasons, having network affiliation can assure quicker turnaround for a UHF station than having to operate in an independent market.

Mr. BROWN. I don't think you have to talk of UHF as set apart from VHF because what we are talking about is three- or four- or five-channel markets. Isn't that it?

Mr. FIRESTONE. Yes. In those markets the stations that are the ones that would be most likely to utilize pay TV service would be the UHF stations.

Mr. BROWN. You have Metromedia in the Washington market as the fourth VHF. Are you suggesting that Metromedia would not want to get STV?

Mr. FIRESTONE. Not at this time.

Mr. BROWN. And if we prohibit the fourth VHF from getting STV, would that leave STV to UHF?

Mr. FIRESTONE. Metromedia's profit picture is such that there would not be any tremendous desire at this time to go into STV when it would be still a somewhat speculative operation. They make a substantial profit in this market. They might do it 5 years from now if STV would prove successful and very profitable.

Mr. BROWN. I am trying to find out whether or not it is the three-station market situation, wherein the network possibilities have all been absorbed or is it the UHF factor that is in back of your thinking? I am trying to get the rationale.

Mr. FIRESTONE. I don't think you can divorce the two, Mr. Brown, because in general there are very few markets in which there are UHF network-affiliated stations. When you get into the three-station market situation with three network affiliates, those are VHF stations.

Too, you are really talking about the fourth station in that market which nine times out of 10 in the smaller markets outside of New York, Los Angeles, and so forth, will be the UHF channel. So, there is no real separation of those two points.

Mr. BROWN. I think there is on the 10th station. Are you worrying about the fourth VHF or just the UHF?

Mr. FIRESTONE. I am worried about the UHF, whether it is the fourth, eighth, or 10th station in the market.

Mr. BROWN. You are worried about that fourth station, anywhere that station is?

Mr. FIRESTONE. If the fourth station is making money now it is not going to go to subscription television service in a five-station market.

Mr. BROWN. Let us say vis-a-vis a VHF station.

Mr. FIRESTONE. I think we can demonstrate the why to the Commission. Denver had a fourth VHF station which for many years has been a marginal station. If that station came in and demonstrated that it would require STV support or maintain part of its free service, I would say, yes; go ahead and do it.

Mr. BROWN. You would make STV available to stations not yet on the air or to those stations which are on the air and are losing money?

Mr. FIRESTONE. Stations which are marginal and which will be forced to terminate free service if they don't have the availability of STV service to help subsidize the operation.

Mr. BROWN. Should subscription television and advertising be allowed on the same program?

Mr. FIRESTONE. On the same program? You mean when you pay for the program?

Mr. BROWN. When I pay for the opportunity to watch somebody.

Mr. FIRESTONE. As an individual, I would oppose it. I don't think it should be permitted, but I won't say that that is my association's answer. I will say that that is my opinion.

Mr. BROWN. Do you have a philosophical thinking or position about this?

Mr. FIRESTONE. My feeling is that a prime asset to the viewer of subscription television is the ability to avoid commercials. I think as practical businessmen subscription television operators would be detractng from its appeal.

But, philosophically, I think where a person is paying, in effect giving dollar for dollar back to see a program, that either the charges be set so that the public does not have to see the commercials on subscription television or they should be kept off or maybe the service will have to go down the drain absent the ability not only to charge the viewer but also to charge advertisers.

Mr. BROWN. And finally, you mention CATV, but I am at something of a loss to figure out how, from a technical point of view, you are going to keep CATV and the neighborhood bar, or anybody else who wants to bring an audience in to watch pay television programs, out of the business of selling admission to that program to other people, so-called pirating the program?

Mr. FIRESTONE. On the over-the-air system, it depends on whether they had the ability to unscramble the signal. I am not a technical expert on the subscription television operation.

Mr. BROWN. If they pay a dollar and a half for the program, they have the right to unscramble it.

Mr. FIRESTONE. That is right, if they take the decoder box. You cannot prevent that.

What I am concerned about at this point in the development of subscription television is the Dingell proposal which would prohibit over-the-air subscription, period. This would then open up the door to widespread wire use of subscription television on an intrastate basis. That would not provide a true test of the viability of the service.

Mr. BROWN. My question is, Can you prohibit by regulation the use of that dollar and a half right to view the screen from being transferred into either a wire system of some kind to spread to other sets or from bringing an audience in to watch?

Mr. FIRESTONE. No, because you are not treating the subscription service as a common carrier. They could stop it by merely refusing to lease their decoder box or to give their decoder box to the local bar and grill.

Mr. MACDONALD. Thank you very much, Mr. Firestone.

Mr. FIRESTONE. Thank you, Mr. Chairman.

Mr. MACDONALD. The next witness is Mr. Robert Hall, on behalf of Skiatron Electronics & Television Corp. We are glad to have you, Mr. Hall.

I have known you under different circumstances. You represented a great university from Connecticut. It has been my pleasure to know you for many years. I am delighted to have you here this morning as I am sure all members of the committee are.

STATEMENT OF ROBERT HALL, SKIATRON ELECTRONICS & TELEVISION CORP.

Mr. HALL. Thank you, Mr. Chairman.

I greatly appreciate the opportunity of being here and having this chance to give my feelings and views on the proposal, particularly as it relates to sports.

For the record, my name is Robert Hall, of New Haven, Conn. I am appearing on behalf of Skiatron Electronics & Television Corp. I believe I am specifically qualified as an expert on sports in general and on football in particular and the relation to the public and to television.

I might also add that I am heavily involved in presenting live entertainment with leading stars in theatrical offerings, including both variety and musical shows.

I was former chairman of the board of athletic control and director of athletics at Yale University, chairman of the NCAA Television Committee representing well over 400 football playing institutions. I was the principal architect of the first NCAA restricted or controlled football program for television and I am sorry to admit, Mr. Chairman, that among my sins is the blackout which I also recommended to the late Bert Bell, commissioner of the National Football League and which was adopted in their plan.

At the time the restricted national football program was adopted the networks and the advertising agencies made many dire predictions concerning its feasibility and salability. Their predictions and speculations were just as unsound then as many of the fears which they are now voicing are about STV.

I have been actively involved in STV efforts to obtain a fair opportunity in the marketplace for over 15 years and it is still rather incredible to me that the pressure groups have been able to block this effort to establish this service in the marketplace along with so-called free or commercial TV with its many admitted faults and shortcomings.

I should like to discuss the proposed sports rule and my understanding of its application to the college football season.

The University of Southern California team is apparently one of the best teams in the Nation. Assume then that this team is to have exposure on commercial television once on a national basis and once on a regional basis, as is now permitted under the NCAA rules.

By the time the University of Southern California and the University of California at Los Angeles game is to be played they are both undefeated and the winner will emerge as the undisputed national champion. Provided that game—and I emphasize the word "game"—has not been broadcast by commercial television within 2 years on a national basis, it would be available for subscription television.

If it had been broadcast on a regional basis within 2 years, it would only be available for STV outside of that region of the previous broadcast.

Another example would be the case of a team like Houston. It might have been one of the great football teams in the Nation, perhaps it may still be. If this team were eligible for an NCAA telecast it could have been overlooked in the early summer selection of the teams and games to be telecast this fall under the NCAA program.

STV if it were now operating would certainly have wanted a Houston game and under the proposed rules could carry it. The proposed rule provides an opportunity to see more football without any siphoning away of football from free TV.

The rule would enable games of special and local interest to be seen by segments of the sports-minded public who now have no opportunity to see the game either live or on commercial TV.

There are many sports events which could be seen in the home for a small fee which are not now and in the foreseeable future will not be available on commercial TV. I could cite examples but I am sure that there are many such examples already in the record. I am sure that I am speaking for a majority of the sports world, both the public and the organizations that sponsor and hold or stage sports events, when I urge the very early adoption of the proposed rules and regulations.

I don't know how much more delay is warranted. Seventeen or more years it has been on the fire and that has been long enough for any tests and determinations. After 17 years of study of the problem of subscription television with respect to sports I am convinced that under the rules that are proposed that allow only one STV operation and only in class A markets having at least five TV stations operating, is unduly restrictive and that such a rule defeats the basic efforts of

providing the public with programing that commercial TV cannot or will not provide.

The NCAA won't broaden its advertiser-sponsored offerings because the reason for the NCAA plan and the pro plan is to protect the gate. But they would like to extend that box office which STV would enable them to do.

Another important point is that college football has a very definite and important stake in its public image. I am convinced in my own mind that free TV or commercial TV is a very important element to secure the success of college football, to maintain its image and position with the public and to further the interest that we have in sports that do provide an important element in our process of educating these young men.

I do not see any chance that the NCAA will broaden its plan of restricting the amount of television that you now can get at home via commercial television. There is a great deal of security in that with respect to this siphoning problem. When you charge for entertainment you are very definitely limited in what people will consistently buy. I know this because this is my business.

Furthermore, product is in very short supply. I am now addressing myself to other areas in the entertainment fields that will not and cannot go via commercial television; 52 weeks a year, every evening, covers many more hours than can ever be filled with box office attractions.

I emphasize that again because when you charge, whether it is in the home or down the road, you have to have what they want or you can't give it away.

To answer a question that Mr. Brown raised the other day, if many STV stations were competing for specific entertainment events, certain of those stations would obviously lose out and would offer something else, I would assume either competing for that box office dollar or perhaps a combination of when they could get one that they could sell they would put it on and when they could not they might revert to commercial television.

The winners would also have to be careful that they do not price themselves out of the market. This is not hard to do. When you pay so much for talent, and we are doing that every day now in our live operations that we are almost getting ourselves priced out of the market with the public.

So there is a control that just exists by virtue of the economics.

The reason that the commercial television does not upgrade more than it has was answered by Mr. Lindow in his testimony. I was rather surprised, it is true, he said they just cannot afford to do it. He said they would if they had the money. We are running into this in the field of live entertainment.

We already now in our theaters pay more to the box office attractions than Las Vegas and we have reached a point where if we go any further we just won't have the people there.

Now I should emphasize again that colleges want commercial television or free TV for their public image. This is most important to them, it is paramount. The problem is very complicated. I have spent a great deal of time studying the proposed rules. I will admit they are not easy to completely understand and I am talking only about the sports rule, but I believe the examples that I gave this morning would

be permissible under the rules and I am convinced that the rules do provide reasonable protection against siphoning.

But in the event there should be further grave concern on this matter of siphoning, I would suggest that the proposed rule might run along such as follows, that no games—and I am addressing myself to both college and professional football—no games which are a part of the NCAA or the National Football League or the American Football League approved programs for free or commercial TV shall be available to STV for a period of 2, 3, 4 years—let us make it 4 years—following the actual broadcast of such games except where such games have been blacked out in the home team's market, presumably a 75-mile radius.

In that case such games may be available to STV in such hometown market. Now if the time bar is extended, if it is felt this committee and the FCC, they can secure both commercial or free TV and give the public a chance to see these events which will not now be available and won't be available until the box office can be extended.

Further, where a game is broadcast by commercial TV on a regional basis, then such game may be available to STV in any communities outside the particular region covered by the commercial broadcast, provided such game was not broadcast in such community or communities within 2 years or 3 years from the date of the proposed broadcast by STV.

What this would do in brief would be—let us take the Yale-Harvard game which will not be on the national or regional telecast under the controlled NCAA program. There is a great deal of interest in that game in the greater New England area.

There would be, if STV were operating in Boston, Worcester, et cetera, a demand for that game. Admittedly on a limited audience basis but sufficiently large enough to warrant the extension of the Yale-Harvard box office, if you will, to those people who would like to have it.

In fact, I have made available several Yale games to the Zenith experiment in Hartford. I might add also that when the first NCAA plan was prepared and put into force and for every year since that time great care has been taken to leave room under the plan to provide for cooperation with pay TV when, as and if it should come about.

So, I suggest that the bar might be extended to a longer period of time or they might wish to take certain specific events and reserve those strictly for commercial TV.

I, myself, would not advocate that as a part of the rule but if they wanted to go that far I think they could, and solve this siphoning problem.

I do not think very much stress has been placed either on the fact that because of the wonderful advan ces thathave been made in the technical aspects of television, that now you can see on commercial television, and no matter how broad STV might get, a replay on that event on the tapes and see the reruns and get an analysis of the game, which is difficult to do now with the reruns in the time allowed when the game is being actually played.

It seems to me that those who have the requirement to get box office extensions for their events might be given that opportunity

and I cheerfully would be one that would pay, as other people have indicated, to be free of commercial interruptions.

But if I don't care that much I can wait a couple of hours or that evening and see that same event played at home for free. I think a great deal of attention should be given to that fact.

I would limit STV or pay TV to box office attractions which are not now available. TV channels have been allocated for educational TV and that has been done in the public interest. It seems to me it would be in the public interest to do the same thing for STV.

I have indicated that other reasonable regulations would be in order and I think would be both legal and in the public interest.

I have addressed myself to the time bar. I have indicated that on the time bar if the interests which control various events which are now on free TV should elect to keep them away from the public for 4 or 5 years, the loss in public interest and in prestige as well as in dollars would be more than they could afford. That is an element that I haven't heard raised so far either before the FCC or here. There is much more at stake than just dollars when you are talking about college and professional football.

Their stake in the public has to depend on this kind of exposure. If they attempt to price themselves right out of the market because pay TV could come along, as one gentleman suggested, and make it possible for them to take their games that are on and hold them off for a couple of years, they would have another serious problem to concern themselves with.

How long can you keep this away from the public and maintain this great interest of the kids that are coming along, that you have to have to keep that sport going, as long as you need to have a gate to keep it going.

Unfortunately college football has to depend on the gate, too. I say the public clamor would also be such that the public image of the particular sport would be seriously impaired.

Now the professional football people as well as the colleges can have the best of two worlds under the rules as they are proposed or as they might be modified; they can supplement commercial TV by putting their home games on STV, talking about the professionals, and stay with commercial TV for the network presentation.

The FCC rules can protect siphoning away from commercial TV and yet make it possible to provide more college and professional football for viewers via STV. This statement also can apply to other sports events.

Further, events with special audience interest, both sports and other forms of entertainment, would be readily available in the home and under the present system we can get them.

That is the sum and substance of my statement, Mr. Chairman. I would like to place in the record a letter from Mr. Weaver, who is the president of the company which operated the Skiatron system out on the west coast.

This letter addressed to the Commission sets forth rather completely the experience that they had out there and the broad acceptance which a form of STV had received. With your permission I would like to put that in the record.

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

(The letter referred to follows:)

SUBSCRIPTION TELEVISION, INC.,
Los Angeles, Calif., July 28, 1965.

Re docket No. 11279, file No. RM–748.
FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C.

DEAR SIRS: Although we are not a party to the proceedings *In the Matter of Amendment of Part 73 of the Commission's Rules and Regulations (Radio Broadcast Services) to Authorize Nationwide Subscription Television*, we would like to express our views with respect to the rule-making petition of Zenith Radio Corporation and Teco, Inc.

We support the petition of the joint petitioners for authorization of nationwide subscription television, subject to the modifications urged by International Telemeter Corporation.

In 1964, this company offered a cable subscription service to two areas in Los Angeles, California and San Francisco, California. The cable passed or would pass one hundred thousand homes in these two areas, and before our business was declared illegal by initiative action in the election of November, 1964, the public had already ordered the subscription service in tremendous numbers. (The initiative has since been declared unconsitutional by the Superior Court in Sacramento.) Although the selling effort in the two areas had only approached mid-point, we already had twenty-five thousand homes signed up for the service, with an additional twenty thousand homes ordering the service but outside the initial area. Our projections show that we signed up half of the homes in these areas where the families owned television sets, and were not moving.

We believe this indicates in a degree far surpassing the experience of the other predecessor's attempts at subscription service, the public understanding of the difference in programs available by cable or fees, and the kind of product that commercial and educational television are limited to, one because of the nature of the advertising-supported system, and the other because of the nature of the donation-supported system.

In the case of over-the-air service, which is properly a matter for the Commission's jurisdiction, which is by no means clear in the case of cabled service, our company believes that the need has been established for the public to receive programs that can never be available on television as constituted, that is to say, (i) material where the audience is too small for commercial sponsorship, such as the cultural coverage programs of opera, ballet, symphony, recital, and the like, (ii) educational material which cannot be afforded by educational stations nor used in any major way by commercial stations, but which is needed by our adult population and will be increasingly needed as we get more leisure, and more incentives to learn and (iii) material which will never be affordable by commercial television, such as current motion pictures, or blacked out home games of sports events, or plays or attractions playing at the box office at the time of televising.

Our experience in California on the use of the service was too brief to be resultful, but we do know that while half the time was spent on motion pictures and another twenty-five percent on sports, mainly baseball, the important fact to professional management in communications is that twenty-five percent of the time spent on system was in the categories of cultural coverage, non-fiction coverage, educational materials, and special events. The promise of the cable service is an intelligent population, with elevated tastes, upgraded standards, and the opportunity to enjoy the pleasures of civilized and literate human beings. We do not believe that, good as it is, commercial broadcasting can perform the mission of bringing to groups of our people coverage of the interests they share in large enough numbers to be able to afford that coverage, although such numbers are wholly unsuited to television on an advertising-supported basis.

Our company believes that the new UHF stations may be sufficient in quantity to permit spectrum use of subscription television as an additional source of income to the station without reducing the number of services now available to people through broadcasting. Thus, in any community, without harm to broadcast service, the program range and scope could be increased through subscription service. The company does believe, however, that over-the-air subscription service will, for many reasons, always be a supplemental delivery system to the cable service, with its multiple channels, its capability to move to a 1000-line system in the near future with the great quality improvement available, its

range of programs, its service to shared tastes of small size but great intensity as well as to the great popular events that are forever unaffordable by an advertising-limited source of funds.

In view of the foregoing considerations, we urge the Commission to adopt the rules proposed in the joint petition of Zenith Radio Corporation and Teco, Inc., subject to the modification suggested by International Telemeter, Inc.

SYLVESTER L. WEAVER, Jr.,
President.

Mr. HALL. I thank you for this opportunity and I am open to any questions.

Mr. MACDONALD. I repeat it is a pleasure to see you again. I can personally vouch for your vast wealth of experience in the field of sports.

The only question I have really, because I could not follow one witness who testified and I did not want to get into an argument with him—said under the present FCC regulation of sports that had been habitually and regularly shown in an area could go on STV within 1 year.

As I read the rule, I thought it would take at least 2 years for the franchise. I was thinking of pro football at the time, but I guess the same thing would hold true of college football. Is he right? I should think they would have to hold back getting revenue from the commercial broadcasts for a 2-year period.

He stated that it would only be a period of 1 year and I could not follow him, frankly. Could you clear that up for me?

Mr. HALL. Yes, Mr. Chairman.

I have read and reread the proposed rule many, many times. I am convinced that the language definitely means that a game—and I keep stressing the words "a game"—would not be available to STV in any community in which it had been put on commercial TV within 2 years prior to the proposed date of the STV broadcast.

I am familiar with the testimony to which you refer. I just must feel, myself, that the gentleman had not read the rule as carefully as I think I may have.

Mr. MACDONALD. Just to buttress what you say—and I am not taking any sides, I repeat—I happened to have the occasion to see the Colts game yesterday. I must have spent $20 in phone calls trying to get tickets. Finally, I was successful.

I know very well if it were going to be on pay TV that I would have gladly paid $4 or $5 to have seen it on pay TV. When commercial broadcasts permit blackouts in the very areas in which the team is supported, why do they now say that pay TV is going to ruin them? You couldn't get a ticket, period.

Do you have any comment on that?

Mr. HALL. Yes; I do. I had the same experience the week before when I came down to attend the hearings before the FCC. It just happened I got here on a Sunday, by design, hoping to see the Redskins play the Giants.

I went through the same experience that you encountered in trying to get to the game.

I would like to comment particularly on this blackout rule. Now the whole basis for controlling television of the sport, controlling the amount that can go on, stems from the basic idea that we have to protect our box office.

As I said, unfortunately college athletics are supported primarily by the box office. That is a mistake but there it is. So in the subsequent plans we provided the blackout rule and the professionals picked that rule up for the same reasons that we established it.

To show you what happened, I recall the statement made: "Why don't the networks insist that there be no blackout." I will say in the case of college football I doubt that NCAA would ever accede to that. If the networks said, "Either give us the whole works or not at all," I think it would be not at all and that certainly would not be in the public interest.

On the other hand, I don't think Congress would have any right to tell the colleges that they have to damage their box office and what supports the college financial structure of the Nation.

So we do have the blackout rules, still have the blackout rules in force.

To show you what can happen. You have a sellout game. In the first rule I said if we have sellout games we are now going to get into trouble with the public because they can't get a ticket and they are going to turn on college football and say quite properly, "I can't buy a ticket and I can't see the game."

So I said that we will provide that in the event the game becomes a sellout and is so declared by both directors of athletics, that then the game will be available for commercial television within the backout area, provided, in the case of college football, no other game is to be played within that area that will be seriously hurt by the telecast.

A specific example arose, the Michigan-Michigan State game was a sellout. As chairman of the committee I called up Fritz Crisler.

I said, "Fritz, you are a sellout and you and Biggie Munn can both declare this and can make it available to WJR in Detroit," an area where tremendous interest in that game existed and people could not buy a ticket. Under that rule it was done.

To show you what can happen and what did happen, Mr. Crisler, the director of athletics of Michigan, was inundated by telegrams, letters, and phone calls, the gist of which was, "If we had known that your game was going to be televised we would not have paid $5 for those lousy seats behind the end zone."

I think you might recognize that there are more so-called bad seats—that is, the average member of the public considers them bad seats—available in a football stadium than there are good.

In the Yale Bowl we can pack 65,000 to 70,000 people in there. There are 25,000 seats goal line to goal line on each side.

In other words, 12,500 on the Harvard side and 12,500 on the Yale side. That leaves an awful lot of seats that people would rather not pay $5 for, if that happens to be the price, if they can stay home and see it for free. Now that is one of the answers.

Mr. MACDONALD. Thank you.

I might also add you can be on the 40-yard line in the Yale Bowl and see the game better from a helicopter.

Mr. HALL. That is right.

I do not want to say this for the record but that is not the best designed stadium to see sports from.

Mr. MACDONALD. Mr. Kornegay.

Mr. KORNEGAY. Mr. Hall, I have certainly enjoyed your testimony.

There are a few things I would like to ask you for my own information and edification.

No. 1 is that you suggest that the rule with reference to sports events be changed or made in such a way as to permit the showing on STV in blacked out areas of particular sports events. I don't quite understand that because as I understand it, that is a part of the contract between the network and the institutions involved in the sports events.

Mr. HALL. Yes.

The NCAA rule provided that there be no telecast within the home area within a 75-mile radius. But the NCAA very easily could, and in my opinion very definitely would, say that the game may, however, go on STV in that area.

Do I answer that question?

Mr. KORNEGAY. Would they not be——

Mr. HALL. No, it would extend the box office so that they might—now this would be a calculated measure. If I were the director of athletics at the particular institution where the game is to be played and that game is blacked out, if the interest is running very high in that game, (a) I would like to satisfy the public who can't get in my stadium (b), I would like to pick up additional revenue; I would then balance how much would I get from the pay TV telecast as against what erosion will there occur in the sale of my tickets at the box office at the stadium.

Mr. KORNEGAY. I can certainly see that if it is a sellout. Is your suggestion limited only to those cases where it is sold out?

Mr. HALL. I think the rule would not necessarily cover that. I think that is the rule that would be made by the people who have the sports event themselves. There is no thought here that the FCC is telling anybody that they have to go on television in any form if they don't want to.

I say in the way it is actually happening now you will as far as I can determine, forever have a situation where you can't buy the ticket and yet it won't be shown in your area. That is the conditions that exist.

But those are made by the owners or the proprietors of the event, not by the networks themselves.

Mr. KORNEGAY. You are starting with the network in that case. The network would prefer to have it shown all over, would they not?

Mr. HALL. Absolutely.

Mr. KORNEGAY. So they would probably pay more for the show if it could be shown all over without any blackout.

Mr. HALL. Yes. Take the Michigan-Michigan State game, for example. That is a very important market so that the advertiser would have paid additional revenues, advertiser dollars, for the privilege of putting that game on Detroit. But STV would also be there to put it on.

Mr. KORNEGAY. But the promoters of the institutions involved, the teams involved, have not seen fit to take the risk, that calculated gamble you spoke of?

Mr. HALL. Because the amount that the advertiser dollar can come up with can't match the erosion of the free offering in the home right in your backyard.

Mr. KORNEGAY. In other words, you say subscription TV can come up with a greater amount of money to buy the show for the blackout

area than what the networks would pay for it, blackout or no blackout?

Mr. HALL. That would be a measure that the director would have to concern himself with. An example that I had to live with was the determination of the pricing of a ticket for a particular event. We could reduce the price, and we did this on several occasions much to our chagrin; we thought we would fill the bowl for a Georgia game.

We said we are going to charge a dollar a ticket. The Georgia bowl boys took a pretty strong exception to that dollar a game. I think it had a lot to do with their attitude on the field. But we had to sell an awful lot more tickets at a dollar to make up for what I could get with many fewer people at $3.

Now, if I am balancing a situation between what commercial TV and what STV might say, I think I would be much more inclined to at least want a price for that blacked out game in my backyard at the home rather than try to get more money from the advertiser and say, "Well, I will just let it go free."

I just don't think they would. I don't think it comes down as much to dollars and cents as to the fact, and this is why the professional teams obviously don't sell those markets—when you black out New York for the Giants games you are blacking out a fantastic market from an advertiser point of view, but they don't dare release that for more advertiser dollars because if they do, you gentlemen and I won't have nearly as much difficulty buying that ticket at the home game.

Mr. KORNEGAY. I have one other question.

On commercial television of sports events we have the timeouts between innings in baseball and timeouts in football games and that is the period when the commercials come on.

What would STV substitute for the commercials during those periods when there is no commercial?

Mr. HALL. A very careful analysis of what had transpired up to that point. I think that the interest in the sports events would be greatly heightened by the opportunity at those periods to make expert comment on what has transpired.

With these tapes that are instantaneous now it would heighten your interest in the game immeasurably.

Mr. KORNEGAY. Thank you.

Mr. MACDONALD. Mr. Harvey.

Mr. HARVEY. No questions, Mr. Chairman.

Mr. MACDONALD. Mr. Brown.

Mr. BROWN. Is there a danger in STV that we are going to put broadcasting into the entrepreneurial kind of business for the factors of Broadway theaters or the backers of sports events that are not regular like professional football or baseball, such as prizefights, where it will be a boom or bust business; that is, where they will either make a killing if they guess right on the home box office or they will lose their shirts if they guess wrong?

Mr. HALL. I am not sure that I clearly understand the question. Let us take the Broadway producer. I have had one fling at a Broadway production. Like most of them it went down the drain.

With respect to the cost of a Broadway production of a musical today, I am sure you are aware of the fact that no matter how much you trim it it will run $500,000 or $600,000. It looks like it will go

higher. Broadway productions are currently not put on as a pre-Broadway show on commercial television. The costs of converting that for that purpose are extremely high.

I believe that if STV does become a reality and it is broad enough across the land, that there would then be an opportunity to try out via the air which would in my opinion provide many more of the Broadway shows being tempting.

Obviously, I would pay my dollar or $2 or $3 and the show may be a bomb. Just like anything else, you go to the box office and put your dollar down. Sometimes you don't get what you look for, vis-a-vis some of the football games we just talked about.

I do feel that pay television would provide support for the sheer commercial entertainment arts. There is a great deal of stress placed on the cultural activities and I am all for them. But they are not necessarily as salable as people would like to have you believe other than the fact that pay TV can take a fairly small segment of the audience that is of not real great interest to the advertiser-sponsor but that group in itself can provide enough support via the home box office to support that activity.

So, I do believe that STV will help the cultural activities. There are enough people but they are spread. A good example is the very success of the show, "The Three Penny Opera." That play ran with great success for, I don't know how many years, in a relatively small theater in New York.

The individual who owned the rights to that show decided to take it on the road. In my discussion I said, "I think you are going to have a sorry experience because five women come in from Kansas City and they are bound to see the 'Three Penny Opera.' They are coming in every day to New York from all over the country."

There is a segment of those people who do want to see these more cultural activities. But you take that out to the area and you won't have enough to fill the theater in that community.

But STV, if it were broad enough, could do something like that because as an offering it would pick up *a* number within the framework of 75 miles or so.

I do not think I have answered some of the questions that you asked. I don't know if I have thrown some light on the subject.

Mr. BROWN. You have raised another interesting point and stated it very well.

What I was thinking of was a broader appeal than what you suggested: the possibility that broadcasters will be in the business of guessing public taste at the local level.

In other words, broadcasters must guess the community reaction to "Three Penny Opera" as an STV project when they pay the price to get it. If nobody signs up or indicates that they are going to watch it and pay their dollar for it, the broadcasters have lost out.

As it stands now through your networks, the local programer's investment in a return is somewhat smaller. The risk is taken by the networks who can bring together a fairly sizable chunk of money and buy a series or expensive program. And then if it bombs out in Kansas City, they have already sold it for a time and they get back some of their money.

But when the local UHF station, which is marginal anyway, is paying a substantial amount of money to get a film or a sports event or a

Broadway production on the air and they guess wrong they have lost a fair amount of money.

Isn't that going to be the case?

Mr. HALL. I would say that I would be quite surprised if the owners of the events that would like to extend their box office would refuse to make them available unless they got the money up, whether it was going to be accepted or not. I would expect that in most instances they would go on a trial basis. If it happens to go in this area, well and good.

I will agree that the owner of the STV station involved will have other costs which, as you might say, will go down the drain if nobody happens to want to buy it.

I certainly agree this can happen. We have five theaters that seat about 2,500 people each and we provide live entertainment in these five areas. We have one in Wallingford about halfway between Hartford and New Haven.

We have another one less than 75 miles away. The very show, I will give you a good example, "Sweet Charity," that might be a bomb with us. The same show, the same star can go 75 miles up the line and do a fantastic business. We just don't know how to measure the difference in area to area.

I agree that the STV operator will put something on in Kansas City that will be successful for many and he may find out if he owns a station down in Lincoln, Nebr., that that one was a bomb. This will probably happen.

But I think the STV people have said, "We want to take our chance in the marketplace, it is our dough. We are going to take these gambles."

I don't think the owner of the event will. I think he will go along and say, "Let us try it out. If they take it in Kansas City and don't like it in Lincoln, we will pick up what we get in Kansas City."

Mr. BROWN. I have one question that relates to the expansion of both baseball and football leagues since the advent of television.

Now I am trying to figure out how that relates or would relate to STV. Is there a presumption on your part that STV would encourage the interest in and support of local sports teams or would discourage it or would have no effect on it?

Mr. HALL. I think STV would, as I indicated previously, enable events, and I am talking specifically about college and pro football, games which no matter what transpires here in Washington will not be available to the public.

The NCAA plan is serving a very important purpose. So that those games not being available on free TV will now become available in my opinion on STV.

Mr. BROWN. I understand your point about blackouts. What I am trying to ask is this. I must admit that I thought when they started telecasting free all the baseball and football games around the country, even though they were blacked out in local areas, that we would have a deterioration of the attendance in the park generally because people could sit in the comfort of their home and watch the game, and that you would also have a falloff of the less-competitive teams, those that were losing every Saturday, and that they would not be commercially salable and that you would begin to get a concentration of fewer highly expert teams.

Instead, we have had an expansion of both major baseball leagues and also expansion of the NFL and AFL football leagues. Is there a conclusion that can be drawn from that with regard to STV?

Mr. HALL. In this instance you must look at college football with a very definite understanding of how its problem differs from that of pro football.

I will come back to that in a moment. Now we will go to professional football. Professional football now has come very close in my opinion to establishing franchises in areas which can support a modern franchise. I doubt that there will be many more communities, and this is my own personal observation obviously, where there will be expansion. I can think of possibly two or three.

Now this means, therefore, that pro football can still look to the big, big segment of the population of this country who occasionally may get to the community and want to get in the park but who wouldn't get pro football at home now. So in the case of pro football I think the biggest impact will be the availability of the home game, which is presently blacked out, on some form of box office extension.

I don't think the impact of STV, if we do have it, I don't think it will make any material difference in whether we are going to see professional football in the foreseeable future. With respect to college football, there the problem is entirely different. The whole basis for the control plan of college football is to protect some 400 box offices. So there is almost no area where you can put a game that does not to some degree possibly interfere.

But if you extend the box office you are now going to have to have somebody pay for something when there is something free alongside of it and it will be the special audience that will want to see it.

You probably could not give the Yale-Harvard game away in some areas of the United States but we know of areas where that game would have a special audience appeal and we would like to give it to them. We don't want to give it to them at the expense of walking away from the NCAA plan.

Mr. BROWN. I want to suggest one other problem. Somebody asked you what they would do at half time. I am inclined to think we might have a little pirating on STV because at half time you might have your ham and coke in centerfield where you see the Anheuser-Busch ad and maybe the football team could sell the centerfield sign a little more dearly than they have now?

Mr. HALL. No comment.

Mr. MACDONALD. Mr. Springer.

Mr. SPRINGER. Could I ask one question and I hope you can keep this brief, at least your opinion on this.

In just what areas would pay TV expect to have programing? Could you name those?

Mr. HALL. When you use the word "areas," are you referring to geographical or events?

Mr. SPRINGER. I am referring to programing areas.

Mr. HALL. I named blacked-out professional games.

Mr. SPRINGER. Blacked out?

Mr. HALL. Yes; the game played in New York by the Giants on a given Sunday will not be televised within 75 miles of that area.

Any college game that is not on the NCAA program which is

selected in the summer before the season begins. This embraces a considerable amount of college football that could and would go to STV.

Mr. SPRINGER. That is two.

Mr. HALL. I would say many offerings of live entertainment that would be Broadway bound. I would say special sports events like the Indianapolis 500. I would say a full schedule perhaps of National Hockey League. I would indicate that the Madison Square Garden major track meets such as the Melrose games and track meets of that national character.

Mr. SPRINGER. What about movies?

Mr. HALL. I would certainly expect that there would be motion pictures that would be made available to STV prior to their being made available to commercial TV. I would fully expect that to happen.

Mr. SPRINGER. May I just refresh your recollection. I don't know that is altogether accurate but reading the ratings, I believe it was in last Thursday night's Star or Wednesday night's Star, the ratings of this fall's new programing, that the No. 1 programing was the "Saturday Night Movie."

The second rated program was the "Friday Night Movie." The third rated program was the "Thursday Night Movie."

If those are the ones that are the big movies under free TV, there is the area that they are going to make money, isn't it?

Mr. HALL. I thought I said, sir, that in my opinion they would go——

Mr. SPRINGER. A big part of what you have been talking about in the sports field, Mr. Hall, is already covered by a ruling of the FCC. I would guess that that ruling would be made even tighter because I don't think Congress will stand around and let you make, at least I would not, and let free broadcasts of sports events be made into pay TV for sports events that can be received on free TV.

Mr. HALL. I concur.

Mr. SPRINGER. Out of the seven you have named four in that category. Boxing is a different thing. That is a closed circuit kind of thing. I can think of one or two others. But the broad spectrum of sports is the exception. There are really only two areas where they could really make some money.

I have been trying to find out whether they can. One would be in the field of special programing of their own, which would be Broadway-bound plays.

A season would be in the field of movies. Are those not the two big areas?

Mr. HALL. I can't agree with you, sir. What I think you are doing is overlooking the vast amount of special interest in special football offerings that are not now and will not be available to commercial TV. It is nothing that Congress has to do with.

It is just that it will not be made available but it would go to the STV because of the special audience appeal that the local game would have. Right now it is not available to commercial TV.

Mr. SPRINGER. Your thought is that they would change the rules of the National Football League and the American Football League to make those available at a price. Is that what you are talking about?

Mr. HALL. I can say that the rules of the NCAA as they exist today have provided specifically for cooperation with STV if it ever is available.

In the case of the Hartford experiment, Yale football games were placed on STV offerings.

Mr. SPRINGER. Then we are talking about live entertainment programing, movies, and a certain spectrum of the sports field.

Mr. HALL. Yes, sir.

Mr. SPRINGER. We have narrowed it down to those three and that is about right.

Mr. HALL. I would say that is about right.

Mr. SPRINGER. I think we have on the record what would happen. This is what I want to know. Can you give any opinion as to what you think the areas of a million dollars will run into?

Mr. HALL. No, sir; I can't make such a projection now.

I believe that the calculations that are made by the opponents of subscription television when they are arguing against it and, therefore, have to build up as much potential purchasing power against them as they can, I believe they have gone far overboard than what will be the case.

I do believe that the UHF station in the community where they are struggling will be able to find events that will supplement or pick up some additional revenue and that can afford to do it and that it will put some revenue, additional revenue, supplementary revenue, if you will, into the hands of the people that have these limited events you have spoken about.

Mr. SPRINGER. I think this is a third major problem. I think these are fundamentals that we ought to see just as broadly as we can.

Now we have passed the field of programing. The second is, how much money and who is this going to apply to when you talk about UHF? How the third, I would like to know what you think about how broad this appeal will be.

Let us review Hartford. It is my understanding they thought they were going to get somewhere between 3 and 6 percent. Did you understand that?

Mr. HALL. No, sir; I don't know that.

Mr. SPRINGER. As I understand it from our staff I think that was their projection. Instead of that they got 0.75, which is three-quarters of 1 percent.

Would you think three-quarters of 1 percent would fit this thing if it were put into effect?

Mr. HALL. I think I can answer that in a different way. I would not expect Zenith, and I do not represent Zenith, would be down here and spend the kind of money they have spent on experiments in the last 5 years if they did not feel they were going to be successful.

Since it is their money and not coming out of me as a taxpayer, more power to them.

Mr. SPRINGER. In the Hartford area it is my understanding that Hartford itself is somewhere between 250,000 and 300,000 people. We will say at 5 percent that would be in the nature of 15,000 receivers but this would be in the nature of 2,500 receivers. I am talking about in the city of Hartford.

They might go outside the city of Hartford which might be a half million people. That would be 2,500 sets. Do you feel this is a serious problem in opposition if this should be true nationwide?

This is a projection I don't know anything about. I am trying to apply what we do know to the national situation.

Mr. HALL. Before I answer that I would like to make one statement. In the case of the trial in Los Angeles and San Francisco they passed some 100,000 or more homes. They signed up——

Mr. SPRINGER. A 100,000 or more homes in both or each?

Mr. HALL. In both. They had subscribers waiting for the service, until the referendum put the thing out of business, some 45,000 subscribers.

One other thing, if I may, sir, because you have touched on this programing problem. Unlike the Zenith experiment, in the case of the San Francisco-Los Angeles, the programing involved sports and movies but the amount of sports and movie time was in the area of some 75 percent with 25 percent of the time being allocated to other special offerings.

Mr. SPRINGER. I have one final question.

How much does it cost in Los Angeles and San Francisco on an average per month to receive a reasonable amount of programing?

Mr. HALL. I think there was an installation fee. I am sorry, I have the answer here but I do not wish to take the time to look for it. I think the installation fee was in the neighborhood of some $20. Then I think it was $4 or $5 a month but I am not sure.

Mr. SPRINGER. It was my understanding in the Hartford thing that to get about what you wanted was somewhere in the neighborhood of between $30 and $40 a month.

Mr. HALL. I did not make myself clear. First, you had an installation fee. I am not clear as to whether from that point on your service was maintained without any further charge and you only paid for what you saw. Bear in mind that in the Los Angeles and San Francisco operation there were supplementary services provided the set owner around the clock so there may have been a slight charge for that supplementary service. But I don't think that is germane to the issue because in the over-the-air you don't have that.

Mr. SPRINGER. As I understand in the Hartford experiment it ran between $30 and $40 a month if they wanted to get anything reasonably substantial. That part I am not sure about but I hope the staff can get this because, I take it, it is not a great deal of trouble to get this particular thing.

Mr. HALL. I can only put an observation on that statement. My observation is this: When you are trying to sell somebody something and it is entertainment it is awfully hard to get very much of that entertainment dollar for any particular operation.

Mr. SPRINGER. In the Los Angeles-San Francisco experiment did they put a coin in the box?

Mr. HALL. No, sir; they didn't need to use a coin there. There was a transponder that enabled the base office in the middle of town to sweep set of the subscriber and determine instantaneously whether he was tuned into that pay program.

Mr. SPRINGER. In the Hartford experiment was this a coin in the box?

Mr. HALL. Some form of payment was made in the home but I am not qualified on that.

Mr. SPRINGER. I understood it was a coin in the box but I am not making that as a categorical statement.

Mr. MACDONALD. It was a billing device.

Mr. SPRINGER. Do we have anything in the record how much that cost?

Mr. MACDONALD. Yes. To correct the witness, it was my recollection that in Hartford the total cost averaged about $100 a year.

Mr. SPRINGER. Thank you, Mr. Chairman.

Mr. MACDONALD. I just have one last question if the committee will indulge me.

I know one of the members of our subcommittee is very interested in this. I don't know if you are qualified to answer it or not. I know you put together the NCAA package. He was very interested in this so-called fake time outs put on so that the commercials can come on the TV. It was alleged by a number of people that sometimes the people would have a drive underway but they had a command from the network man down on the field and he would give the signal it is time for a commercial and action on the field would stop then and there.

That as I understand it is in professional football. I was wondering if it is also true in college amateur, so-called amateur football.

Mr. HALL. This has been a matter of grave concern to, first, the team and the coaches. Obviously since the advertiser dollar is paying for this he has to get an agreed number of commercials.

The situation did arise in the past in college football and there was a notable case of a team—as you know, Mr. Chairman, when you are moving—that stopped and that is why the opposing team might take time out to get the steam down, stop the momentum.

Every effort has been made and I must say the commercial networks have been very sympathetic with the problem and to my best information and belief that is not very likely to happen in college football this fall because the men who are on the job there who are assigned by the networks to cover the game are aware of this problem and will use their good judgment but it still does remain the fact they have paid for an x number of commercials and they are entitled to get them in somehow, somewhere. They are just going to try to guard against doing it at the wrong time.

Mr. MACDONALD. It is true in pro but it is also true in college?

Mr. HALL. Yes; but they are doing their best not to overdo it.

Mr. MACDONALD. They are using their best judgment?

Mr. HALL. Right.

Mr. MACDONALD. Thank you very much, Mr. Hall.

The next witnesss is Sidney Dean. Is he in the room? He represents Americans for Democratic Action. If not, with unanimous consent if he submits a statement it may go into the record at this point.

(Mr. Dean's prepared statement follows:)

STATEMENT OF SIDNEY W. DEAN, JR., CHAIRMAN, COMMUNICATIONS COMMITTEE, AMERICANS FOR DEMOCRATIC ACTION

ADA'S CONCERN

ADA is a non-partisan, independent organization of private citizens in local chapters throughout the country, concerned that the social, economic, and political institutions and policies of the United States serve the public interest in a free, just, humane, and expanding nation. ADA's exclusive concern in national policies for subscription television is that they serve, and not thwart our vital needs and objectives for a national system of high-capacity, broad channel carriers of communications services to the public and business over the air and by cable. ADA concurs with leaders in the communications industries and tech-

nology who believe that such an integrated system will become the carrier, not only for television and radio as we now know them, but will take over the functions of the greater part of our present systems of print media and telephone services.

ADA has previously communicated to the FCC and to the Congress its concerns with the public-interest aspects of broadcasting policy; in 1955, ADA called for the development of audience-payment television as a new, independent system of public communications under common carrier utility regulations. ADA has consistently called for FCC and Congressional restrictions over the common ownership and control of the public media in our metropolitan markets, including newspapers, radio, TV, and CATV. ADA was among the first to support the reservation of educational channels, the all-channel receiver requirement to open up UHF, and, more recently, the establishment of a comprehensive system for public broadcasting.

ADA gives high priority to the development of audience-payment television as a precursor of many new communications services which will become feasible when a public payment system becomes available. Under forward-looking and wise public policies, such public payment systems can finance a vast new range of diversified information, educational, commercial, and cultural services which cannot be financed by the economics of mass advertising. These new services cannot be free to grow and compete in response to the needs and free choices of the public and business if they are to be organized only as "beneficial supplements" (to use the terminology of the Committee) to commercial broadcasting and networking, which must give paramount consideration to advertising revenues.

The U.S. now possesses all of the requisite technical and economic resources for such an integrated on-the-air and cable system. Within a comparatively brief time-span, such a system will be established for the public distribution and sale of news, entertainment, education, data processing and retail services; the services will be "live" or "dialled" from central exchanges to "libraries" of information and cultural resources. Subscribers may rent receiving and sending instruments for audio-video, facsimile, printing, or computer terminals; there will be "electronic editions" of our newspapers, magazines, and books. The equipment may be used live, or programmed to make recordings for future reference. The rapidly expanding demands of the public and business for these services will require the most efficient, integrated use of on-air transmission by existing stations, microwave and laser interconnections, relay satellites, plus high-capacity cables like CATV which will soon interconnect nearly every home, place of business, and institution in the United States, precisely as the telephone system now functions.

The over-riding criterion of public policy for this full-service national system is that it be made available at reasonable and equitable rates and conditions to all who wish to distribute or market communications services to the public, whether for direct public payment or for sponsor or advertiser payment. It is incompatible with this criterion that carrier stations, interconnecting networks, and cable systems, which are temporarily in short or monopoly supply, exercise unilateral privileges to control public access to the system by media and services, and offer competition with their own services. It would be equally opposed to the public interest if these carriers be permitted to fix rates and terms at will contrary to constitutional safeguards of free press and free competition which have been historically applied to all other carriers of public communications, including the telephone and telegraph systems, the postal system, goods carriers, and even the motion picture industry.

SUMMARY OF ARGUMENT

The establishment of public policies to inaugurate a new national system of direct public payment television and other feasible electronic services can be regarded in either of two ways: as a set of minimum modifications and adaptations to accommodate present broadcast services unchanged, or as a framework for a new yet clearly projectable public communications system to meet the needs of the immediate future.

The report of the STV Committee has chosen the first alternative, with little or no recognition of the requirements and safeguards for our needs of the future. In fact, two far-ranging studies of future U.S. requirements for electronic communications have been ignored; one, by the President's Commission on Telecommunications; the second by the Federal Communications Commission itself.

ADA submits that the adoption of the Committee's recommendations for a new direct public payment system owned and operated by the present commercial system would be irresponsible. It would foreclose the rights of the Congress,

given access to these two studies, to make a determination as to the effect of public needs on future policies; it would preclude recommendations from the Executive Branch that may follow from its own study. It would deprive the Commission, itself, of the opportunity to apply the findings of its own study.

Furthermore, ADA submits that there are major defects in the Committee's assumptions and findings, cited later in this argument.

SPECIFIC ARGUMENTS

ADA believes that many of the defects of the Committee's proposal stem from underlying assumptions which are often not identified or evaluated in the public interest. For the sake of brevity and conciseness, ADA arguments are addressed to those assumptions as well as to specific provisions of the proposed regulations.

STV as a "beneficial supplement" to commercial broadcasting: ADA considers this basic premise of the Committee's Report to be fallacious. Educational programming was also first regarded as a "beneficial supplement" to commercial broadcasting; it required twenty years of experience to learn that the two were incompatible, and required separately licensed channels. FM channels were regarded as beneficial supplements to AM; only recently, the two services have been severed to permit development of their individual capabilities for diversity in the public interest.

Separate channels: STV operations can be profitable on fractions of one per cent of sets-in-use. This economic fact contravenes all of the economic and profit principles of the commercial broadcaster who can produce greater revenues by advertiser-payment mass programming, and who cannot accommodate such STV audience flows into his advertising programming. Under commercial broadcaster control, therefore, there will be no incentives for specialized audience programming to students, cultural interests, vocational groups such as doctors and technicians, etc., possible on a full broadcast day schedule. This situation illustrates only one of the irreconcilable conflicts that flow from authorizing STV for commercial licensees, as opposed to licensing STV in exclusive channels, like educational broadcasting. The conflict of interest is irremediable, because it flows from the commercial broadcasters' and networks' revenue, profit, and economic incentives. These incentives compel the commercial licensee to:

1. Maximize the audience for each program.
2. Maximize the advertising rate per thousand audience.
3. Stabilize both his audience deliveries and rates.

He can accomplish these objectives by:

a. Striving to minimize the number of channel choices available to his potential audience, on-the-air or by cable.

b. Opposing and delaying the activation of new bands, channels, and services which may erode his audiences, whether educational, CATV, or "public"—paid or free.

c. Acquiring or controlling his program sources of supply (film, sports, talents, etc.) as well as all channels to markets (syndication, records, foreign, etc.).

d. Acquiring the political, legal, economic, and journalistic capabilities to accomplish the above objectives from growth through multiple station acquisition, supply and marketing integration; employing these capabilities to influence the Congress, the FCC, and public opinion.

The principles of *common carrier structure and regulation*, which have been imposed on all other public communications systems like the telephone and postal sytems, carry with them beneficial incentives to operate in the public interest. The common carrier's profits and stability are a function of the number and total capacity of his systems, since his earnings are fixed by return on investment or revenue. The common carrier is therefore ceaselessly striving to promote new, improved, and lower-cost services to communicators in order to maximize the channel capacity on which his profits are based. ADA believes that common carrier principles are not only the best, but the *only* system which can protect and advance the public interest in STV and other public electronic communications.

Perhaps the most disastrous effect of authorizing STV in commercial channels will be to create huge economic vested interests in the perpetuation of the control of *all* public payment electronic communications, whether broadcasting, data processing, banking and retailing, of electronic equivalents of newspapers and magazines, by private, virtually unregulated carriers. A public pol-

icy of this magnitude and impact on the future of our media of communications and the emerging non-entertainment communications services certainly requires Congressional action.

The awarding of exclusive franchise rights to commercial stations for the development of STV, the precursor of a national system of public payment electronic communications, would constitute a shocking give-away of our public domain to private interests which have proven to be virtually unregulatable.

Pre-emption as an Evil: Granting the public interest in reserving four full-time channels per market for "free" programming (advertiser sponsored), it does not follow that STV should be authorized for only one channel in five, six, seven, or ten channel markets, thus unnecessarily creating a monopoly situation. A more reasonable rule would authorize STV service on any number of active or inactive channels per market provided it did not reduce the number of "free" channels below four, or exceed the total number of free channels.

Siphoning as an Evil: Granted the wisdom of reserving a minimum of four full-time "free" stations in each area, the imposition of further direct FCC controls over STV programming for the purpose of controlling competition between public-payment and advertiser-payment systems violates basic American principles of free press and free competition.

FCC Consideration of Broadcaster Profitability: Throughout the Report, an assumption is clearly made that commercial licensees are entitled, as a matter of right, to freedom from the possible competitive effects of STV on their profitability. This doctrine has no sanction in law or in the free market-place. Even if commercial licensees were to pay franchise taxes for the use of a public domain, profit protection has no place in public policy.

Minimum Free Time per STV Channel: Granted the reservation of a minimum of four full-time "free" stations per area, the requirement that an STV station must find advertiser sponsorship, or pay for sustaining time to meet the minimum "free" time requirements of commercial stations, is irrelevant, uneconomic, and an unworkable intermixture of two incompatible forms of broadcasting. A broadcast channel divided against itself cannot function in the public interest.

Block-booking: The sanction, on request, of STV's contracts to procure the entirety of their programming from a single source is a pernicious invitation to suppliers of programs and technical systems to constrain block-booking. (73.642: (e) (3)).

STV on cable or CATV: ADA can find no reason for not mandating the carriage of STV by CATV systems on an optional-to-the-CATV-subscriber basis. However, the far-reaching future potentials of cable distribution may doubtless justify ample time and fact-finding opportunity to study the potentials of a system whose ultimate revenues will surpass all present broadcasting revenues by ten times and exceed those of A.T. & T.

CATV loophole: Assuming the prudence of delaying STV carriage, there is no justification for exceptional treatment of private agreements for carriage between STV stations and CATV operators (paragraph 309 of the "Report"). The effect of such agreements would be to aid and abet the common ownership of CATV and broadcast stations and give improper commercial advantage to such combines, which ADA opposes as a matter of principle.

FCC direct responsibility for rates and terms to the public: A broadcast license is a franchise for use of a public domain for private gain. While broadcast advertising rates are restrained by inter-media competition (print, mail, display, radio, TV, etc.), there will be no effective competitive restraint over STV rates. There would be no restraint whatsoever under the Committee's proposal for single STV station market monopolies. For this reason alone, common carrier utility regulation is essential to the public interest.

Common ownership and control of technical systems and program sources: With diversified, highly competitive program sources available, there is no justification for permitting, even on an exception basis, restrictive agreements between systems operators and program sources. ADA has already affirmed its conviction that STV stations should be operated as common carriers, assured fair return on capital, and regulated to ensure carriage to all program and services suppliers at uniform, regulated rates and terms. Moreover, the precedent of technical system control over programming will have unfortunate consequences when cable carriage of STV is authorized, since proprietary and patented technical systems are not required for control of cable services.

Non-uniform technical systems: The proposal that a multiplicity of technical systems be authorized for various markets can readily lend itself to use as an instrument for furthering the growth and concentration of station chain systems.

Exclusive technical system controls can also be instruments of restraint over network affiliations other than on the competitive merits of programming and services. This provision is one of many in the Committee's Report that strongly suggests that the entire rule-making is premature. It appears to be a second phase of highly restricted STV market-testing rather than a wisely conceived, national system.

CONCLUSION

In conclusion, ADA urges the FCC to avoid pre-emptive, premature, and unilateral action on policies which would establish guide-lines or precedents for any segment of direct public-payment mass electronic communications, on-the-air or by cable, until the findings of the FCC's own study and of the President's Commission on Telecommunications become available. We urge the FCC to restudy national requirements for public-payment, broad channel, electronic communications by the essential criteria of public interest. We urge the FCC to reject the premises of the Committee Report which would constitute a give-away of the public domain, of unmeasured and massive potentials for social usefulness and economic yield, to regressive and virtually unregulatable private interests.

Mr. MACDONALD. We will hear next from Mr. Thomas A. Banning, Jr., 5520 South Shore Drive, Chicago, Ill.

STATEMENT OF THOMAS A. BANNING, PATENT ATTORNEY, CHICAGO, ILL.

Mr. BANNING. Mr. Chairman and members of the subcommittee: I am pleased to be able to speak to you this morning on this subject but I am not going to talk about baseball games or football games or details of that kind. I am going to talk about pay television in its broader aspect

In the first place, I will introduce myself by reading the first paragraph of this monograph which has been passed around.

My name is Thomas A. Banning. My address is 5520 South Shore Drive, Chicago, Ill. By profession, I am an attorney specializing in patent practice, as I have done since 1910. Before commencing my legal education, I earned my undergraduate degree in electrical engineering and throughout my career I have followed the developments in the fields of communications and electronics.

I presume to read that because, as an individual not connected with any of the conventional organizations that are presenting themselves either for or against pay TV, I view the matter not only from my own standpoint but from that of the public.

Now, in the first place, what is pay TV? We have been brought up to believe for the last 15 years that pay TV is something that is bad, something that the public is not going to benefit from, something that is going to be exclusively for a very small percentage of the viewing public and therefore in the nature of a monopoly that will not benefit either the viewing public or television industry as such. You give the dog a bad name and that dog will operate badly.

I am going to give pay television a good name. I am going to show you a pay television operation which is free to the public. In other words, when the pay program is put on the air not only the subscribers who pay a fee of a dollar or $2 or $3 or whatever it may be for that program, are going to be able to get it but every member of the public within viewing range, receiving range, of the broadcasting station is going to receive that same program in just as fine a quality as is going to be received by the subscriber.

But the public nonsubscribers will receive it in monochrome or black and white whereas the pay subscribers, who may wish to have it dressed up better, will pay their dollar or $2 to get it in color.

Now, this is not a double broadcasting system although it is a completely over-the-air system. But it is a system in which the color programs are put out from the broadcasting station in such a manner that a color receiver will normally receive them in monochrome but in such a manner that the subscriber by a slight attachment to his receiver, which we will call the "little black box," is able to supplement the reception which he gets over the air by a locally produced "burst" signal as it is called which he has to pay for and that immediately converts his reception into a color reception.

Now, in order to emphasize what this means, I will presume to call your attention to the single sheet which is set into the monograms as a flyer, and under the caption of "B" we find the listing of special or pay programs broadcast without "bursts" as a color program. That program can be received in monochrome by an ordinary monochrome receiver. It can be received in monochrome on a color receiver in the hands of the public because they don't get this burst signal but when it comes to the subscriber he can receive it also in monochrome if he does not care to make payment but if he wants to make payment his receiver, the supplemental unit, will supply the burst signal so that he now gets the program in color.

Now, I followed the tests of Zenith at Hartford, the tests of Telemeter up in Canada near Toronto. There has been a great deal of effort placed in a careful analysis of how many persons in a given area or what percentage are probably going to be willing to subscribe. As near as the estimates which have been made at the present time, I think there the estimates run about 5 or 10 percent of a total viewing population of an area of 20,000 receivers and up.

I am going to present a system which doesn't require any change in the subscriber's receiver. It does not require any change in the receivers, television receivers, of a million viewers within the viewing area if there are that many; it doesn't require any change in the complexity of the circuitry in the broadcasting station with the exception of the addition of one or two simple switching operations.

It doesn't require a complex supplemental unit for decoding or eliminating the scrambling signal. It requires in place of that only a very simple unit which produces the burst signal which has not been sent out by the broadcasting station for this particular special program.

Now, due to that circumstance, due to the fact that when a special program is to be put on the air the attendant at the sending station pulls the switch that eliminates a burst signal, as it is called, from the broadcast, all the viewing public having any kind of televison receiver will be able to receive that same special program in black and white without pay but, as I have explained before, the subscribers may also receive either in black and white without pay or in color with pay.

Now, what is the result of this? The result is that that special program is made available not to zero persons of the nonpay public, it is made available to 100 percent of the nonpay public as well as to the members who subscribe and who are willing to pay a $1 or $2 or $3 to have the program in color.

Now, the result is that all of the objections which I have heard against pay television on the ground that it will create a monopoly, on the ground that it will tend to create moneyed classes, on the ground that it will, as I heard over in the FCC hearings a couple of weeks ago, tend to inspire and bring on race riots; I don't know where in the world anybody ever got that idea but it was so declared. It will place every member of the public, subscribers and nonsubscribers, on the same parity that they are today with the single exception that the subscriber is able to get the program in color, by making a payment for it. If he does not care to make the payment for it, he does not have to do so and he will not get it in color; he will get it in black and white.

Now, this approach is entirely consistent with the American way. We have classes in this country. Let us face it. I go over to the station to get a train to go back to Chicago or I go to the airport to buy my transportation on the airline. I am given a choice. I can go back in a coach on the train and get through and sit up all night if I am willing to do so and save money, or I can go up in the Pullman, first class, pay a little more money. Even up there I have a choice between a roomette, a compartment, a bedroom, drawing room or even the whole car if I want to, or if I can do so I can rent a train. In other words, these are all recognized as a part of the American system. Not only that, they are placed under the control of the Interstate Commerce Commission or this commission or that commission so that these differences are recognized.

Now, I say in view of the circumstances here it seems entirely proper to offer a pay television system to the public which is not one that is limited in its reception to that 5 or 10 percent that Zenith has been telling about after the Hartford test. I say it ought to be a pay television system that is open to everybody in the country to get the program; if it is a good program they can get it but they can get it in monochrome if they don't care to pay for it.

Now, I am not asking that any system, any one system or another, be given a monopoly of the pay or subscription television business. It is open to anybody who can enter it properly. The only monopoly that the owners of this particular system would ask is that that is granted naturally under the patent system and is recognized as such. Even so, the patent holders are subject to the regulations of the FCC in regard to granting licenses to anybody who is entering the business.

Now, if I may, I would like to pass over to the written text which I have supplied and read very shortly from that.

I have requested this opportunity to appear before the subcommittee because the debate in the past between the advocates and the opponents of subscription television has been proceeding on the basis of an erroneous assumption. That erroneous assumption is that whenever a television broadcast transmission channel is used for subscription television service, such channel in the reception area of the transmitter would necessarily be unavailable for the benefit of all those members of the general public who are unable, or do not choose, to pay a charge.

The term "pay television" has been widely used as being synonymous with and limited to a system in which the picture is scrambled as sent out from the broadcasting station so that no member of the public who is not a subscriber to the service is able to secure that program in an intelligible form.

Thus, it is argued that the nonsubscribers to the system are being deprived, for the time and duration of the pay program, of reception of any program on that particular channel.

I am here to explain an alternative system of subscription or pay television, using that term in a broader and more correct sense. This alternative system makes it possible for a program broadcast on a single television transmission channel of standard width to be received in two satisfactory intelligible forms. One form is a color rendition available only for a charge and by the use of subscription equipment attached to a subscriber's receiver; the other form is black and white reception receivable on any conventional television set without any additional equipment.

At this point, I would like to inject that one of the changes or one of the modifications which has been extensively discussed by the FCC and those who have been talking about pay television up to this time is the fact that the system must be one, if possible, which does not necessitate the allocation of any new channel or does not include or does not require the enlargement of a presently allocated channel.

The system that I am proposing here and trying to enlighten you on does not require any of these changes whatsoever. Any broadcasting station in the city of Washington or in the State of Illinois or in the country that is equipped today to emit color signals can use this system without putting a single additional piece of equipment into their sending station with the exception of a simple switching operation which will enable them to discontinue temporarily during the sending of this special program, to discontinue the burst signals. Then when that program is completed, then the ordinary so-called commercial programs are back on the air, the attendant throws the switch back in again and color programs that are sent out can be received by anybody with a color receiver without pay for the duration of that commercial program or 10 others during the day.

In other words, this not only meets the requirements which were established and set forth in some of the modified rules of FCC governing pay television, it goes beyond those requirements.

Now at this point I want to emphasize that under this proposed system all nonsubscribers to the pay or subscription system are nevertheless able to receive not only the conventional programs which they are today receiving free, but also they may receive any and each of the special or pay or subscription programs in monochrome (black and white) and without pay or charge. This is an additional dividend which is offered to the public, which they will not and could not possibly receive under the scrambled type of operation.

Thus, I first call attention to the fact that we must dispel the misconception—widely held, I'll admit—that the use of any pay television system would deprive the public of the use of the channel in question, and above all would forbid the public from receiving that particular program.

Up until now whenever talk has been indulged in with reference to pay television, people have thrown up their hands in holy horror, why that is going to deprive 90 percent of the public of that particular very fine program. It is not, under this arrangement.

The pay system which I am now proposing and discussing has no such limitation or handicap. Under this new system, which may per-

haps be described as a two-level system, the public is not deprived of anything. On the contrary, the public nonpay viewers are able to gain free access to pay programs of the very highest quality and many of which would not otherwise be put on the air because of their cost of production.

Under this two-level system, any owner of a receiver, whether monochrome or color, who is within receiving range of the broadcast station may receive that special program in just as fine a rendition, as far as picture is concerned, as the person who makes the payment. The difference is only that the nonpayer has the picture presented to him in monochrome whereas the subscriber and payer pays money to receive the same program in color. Thus, all TV sets could be tuned into the same programs—but only those having color sets and who could afford to pay would be paying for the advantage of color, if they wish it.

Having thus briefly outlined this proposed two-level pay or subscription television system, I pass to certain other observations which are of importance from the practical standpoint of television broadcasting and receiving techniques. These I have already referred to but I would like to summarize them at this point.

1. Any broadcasting station can be brought within the sphere of the operations already outlined. It is not necessary to provide special broadcasting equipment to enable production of the results and operations which I have described. In other words, the additional equipment necessary in a conventional broadcasting station would be minimal, and the required alterations would be neither extensive nor expensive.

Furthermore, the system is one that does not require the use of any new channels to carry special program signals. The operations already defined require no change in the channel frequencies, no enlargement of the channel width or other interferences with previously established and assigned channels.

Mr. MACDONALD. Mr. Banning, I know you have come a long way to testify before us. We appreciate it. The House is in session. We have one more witness and technically we should not be sitting. Any member of the committee may make a point of order that the House is in session and we can't sit. We have one more witness. We were very hopeful that we could wind up the complete hearing today.

Since you have summarized your testimony, it might be possible for you to insert your entire statement in the record and it will be as if you had gone through it word for word. Actually, I am not sure that we are the right forum or you to be testifying before, because it seems to be a matter of more concern to the FCC than to ourselves. Technically, we are sitting on a bill introduced by Mr. Dingell, of Michigan, to ban pay TV, prohibit pay TV. So, therefore, if you would not mind, if you would insert the rest of your statement which, as I say, you have already summarized, into the record, it would certainly help the committee.

Mr. BANNING. I was going to say that I can summarize in 2 or 3 minutes, if that is what you mean, and then I will be through.

Mr. MACDONALD. All right.

Mr. BANNING. I was just going to read these other two short paragraphs. I appreciate very much the opportunity to explain this.

2. This proposed system does not require any change in the circuitry

of any receiver, either monochrome or color, in the hands of nonsubscribers to the service. All such receivers will be able to receive the secial pay program without pay or charge operation, but in monochrome.

3. This proposed system does not require any change or modification of the internal circuitry of the color receivers used by the subscribers to the service; neither does the use of this system require any connection into the circuitry of such receiver other than connection to existing external terminals.

4. The operations by which the system is made available are extremely simple in themselves.

I will then conclude by simply saying this, that I am not here to urge the adoption or rejection of any particular system of pay television. I think that the good American system of selling those questions in the marketplace should be available.

All I ask is that any rules or statutory enactments that may be made, I would like to see them such that they would not forbid this type of operation as well as allowing those.

I thank you very much.

(Mr. Banning's prepared statement follows:)

STATEMENT OF THOMAS A. BANNING, PATENT ATTORNEY, CHICAGO, ILL.

Gentlemen, my name is Thomas A. Banning. My address is 5520 South Shore Drive, Chicago, Illinois. By profession I am an attorney specializing in patent practice, as I have done since 1910. Before commencing my legal education I earned my undergraduate degree in electrical engineering and throughout my career I have followed the developments in the fields of communications and electronics.

I am not appearing on behalf of any client. In addition to my work for clients in highly technical fields I have myself been the inventor of a number of devices and methods in electrical and mechanical fields and my various inventions are covered by approximately 70 patents issued by the Patent Office. Eight of those patents issued to me are in the field of television and additional developments by me are covered by a number of pending patent applications. I am appearing before you to explain certain of my developments in the field of subscription or pay television which are particularly relevant to the hearings you are now conducting. While I am appearing on behalf of myself, I feel that in a very true sense I am appearing for the benefit of the public in general. This is because I hope to show that developments of mine, if permitted to be put into practice in television broadcasting, will have substantial and far reaching benefits for the public, which might not otherwise be made available to them.

The Communications and Power Subcommittee is presently holding hearings on the subject of pay television and whether authorization of pay television would be in the public interest. Fears have been expressed from very respectable sources that subscription television would substantially interfere with the quantity and quality of television broadcasting which would otherwise be available to the public without charge.

Last week the Federal Communications Commission heard oral arguments regarding the proposed establishment of over-the-air subscription television service for the nation, and proposed rules governing such service. Those proposals included various provisions designed as safeguards against diminution in the quantity and quality of free television programming available. Various opponents of subscription television have maintained that proposed safeguards would be insufficient and ineffective.

I have requested this opportunity to appear before the Subcommittee because the debate in the past between the advocates and the opponents of subscription television has been proceeding on the basis of an erroneous assumption. That erroneous assumption is that whenever a television broadcast transmission channel is used for subscription television service, such channel in the reception area of the transmitter would necessarily be unavailable for the

benefit of all those members of the general public who are unable, or do not choose, to pay a charge.

The term "pay television" has been widely used as being synonymous with and limited to a system in which the picture is scrambled as sent out from the broadcasting station so that no member of the public who is not a subscriber to the service is able to secure that program in an intelligible form. Thus, it is argued that the non-subscribers to the system are being deprived, for the time and duration of the pay program, of reception of any program on that particular channel.

I am here to explain an alternative system of subscription or pay television, using that term in a broader and more correct sense. This alternative system makes it possible for a program broadcast on a single television transmission channel of standard width to be received in two satisfactory intelligible forms. One form is a color rendition available only for a charge and by the use of subscription equipment attached to a subscriber's receiver; the other form is black and white reception receivable on any conventional television set without charge and without any additional equipment.

Now at this point I want to emphasize that under this proposed system all non-subscribers to the pay or subscription system are nevertheless able to receive not only the conventional programs which they are today receiving free, but also they may receive any and each of the special or pay or subscription programs in monochrome (black and white) and without pay or charge. This is an additional dividend which is offered to the public, which they will not and could not possibly receive under the scrambled type of operation. Thus, I first call attention to the fact that we must dispel the misconception—widely held, I'll admit—that the use of any pay television system would deprive the public of the use of the channel in question, and above all would forbid the public from receiving that particular program. The pay system which I am now proposing and discussing has no such limitation or handicap. Under this new system, which may perhaps be described as a two-level system, the public is not deprived of anything. On the contrary, the public non-pay viewers are able to gain free access to pay programs of the very highest quality and many of which would not otherwise be put on the air because of their cost of production.

Under this two-level system, any owner of a receiver, whether monochrome or color, who is within receiving range of the broadcast station may receive that special program in just as fine a rendition, as far as picture is concerned, as the person who makes the payment. The difference is only that the non-payer has the picture presented to him in monochrome whereas the subscriber and payer pays money to receive the same program in color. Thus, all TV sets could be tuned into the same program—but only those who could afford color sets would be paying for the advantage of color, if they wish it.

Having thus briefly outlined this proposed two-level pay or subscription television system I pass to certain other observations which are of importance from the practical standpoint of television broadcasting and receiving techniques.

1. Any broadcasting station can be brought within the sphere of the operations already outlined. It is not necessary to provide special broadcasting equipment to enable production of the results and operations which I have described. In other words, the additional equipment necessary in a conventional broadcasting station would be minimal, and the required alterations would be neither extensive nor expensive. Furthermore, the system is one that does not require the use of any new channels to carry special program signals. The operations already defined require no change in the channel frequencies, no enlargement of the channel width or other interferences with previously established and assigned channels.

2. This proposed system does not require any change in the circuitry of any receiver, either monochrome or color, in the hands of non-subcribers to the service. All such receivers will be able to receive the special pay program without pay or charge operation, but in monochrome.

3. This proposed system does not require any change or modification of the internal circuitry of the color receivers used by the subscribers to the service; neither does the use of this system require any connection into the circuitry of such receiver other than connection to existing external terminals.

4. The operations by which the system is made available are extremely simple in themselves. I will try to explain in brief, non-technical terms why the system is entirely feasible. Not only can it be achieved at a very minimum of cost for change of equipment in the sending station, but the possibilities of trouble developing after long usage are minimized. In brief:

Under conventional practice and FCC rules and regulations, color signals broadcast in a manner to be translated by color receivers include the following. At the broadcasting station the video signals include a luminance component, a chrominance component, the line synchronizing signals, and what are known as color burst signals. Without these color burst signals, the chrominance or color signals for production of the color picture cannot be translated into color. If the color burst signals are absent, the color receiver (whether owned by a non-subscriber or a subscriber to the system) will translate the received broadcast signals as a monochrome picture. It is therefore evident that when the color burst signals are not included in the transmission broadcast from the sending station, all color receivers (as well as all monochrome receivers) tuned to that station will translate the signals as a monochrome or black and white picture.

Since, as I have explained, the subscriber may receive the program in color by making pay or subscription operation, it then becomes necessary to make provision for supplying the color burst signals locally to the color receiver of any particular subscriber who desires to have the special or pay program rendered in color and is willing to pay for it. Accordingly, my system makes provision for locally delivering to the color receiver of each subscriber properly synchronized color burst signals when such a subscriber operates either a prepayment device or a device for recording charges.

All of the foregoing special operations are produced without entering the circuitry of the subscriber's color receiver. This result is obtained by the use of a small receiver supplemental unit, including a color burst generator, which is attached inductively to the antenna of the subscriber's receiver, or to the line extending from such antenna to the r.f. input element of such receiver.

To sum up, pay or subscription television operations need not deprive the general non-paying public of the use and benefit of available television broadcasting channels. I submit that this is a fundamental consideration in the whole field of authorizing and regulating television service, including subscription television service. While certain possible applications of some of my developments relating to subscription television would not require free monochrome reception of any program receivable in color for a charge, the particular development I have outlined to you today affords one entirely feasible method whereby subscription television operations can be commenced on a basis which, beyond question, is beneficial to all of the public. Beyond question, it would result in a greater variety and quality of programming being available to all of the public than would be the case if no subscription television service were permitted.

I am not stating any conclusion that other systems of subscription television are not in the public interest. Nor am I stating any conclusion that FCC regulation of other systems would not adequately safeguard the quantity and quality of available free television. Further, I am not attempting here to project for various localities and various future periods the economic feasibility and attractiveness of the system I have outlined to you today. What I am urging is that (1) here is one system which clearly would not harm but rather would benefit all of the public and (2) any investors willing to risk their capital in endeavoring to establish a market for the subscription television system I have outlined should not be barred from doing so.

In conclusion, it is my sincere hope that the Federal Communications Commission and the Congress will recognize that it is in the public interest to give due weight to the foregoing considerations when providing for and regulating the future development of subscription television in the United States.

Thank you, gentlemen.

CHART SHOWING VARIOUS BROADCASTING OPERATIONS POSSIBLE UNDER THE PROPOSED BANNING SYSTEM FOR SUBSCRIPTION TELEVISION ("STV"), AND SHOWING THE VARIOUS RECEPTION RENDITIONS POSSIBLE UNDER SUCH PROPOSED BANNING SYSTEM

A. *Conventional broadcast Non-Pay Program:*

1. Broadcast in Monochrome:
   - (*a*) Rendered in Monochrome by Monochrome receiver.
   - (*b*) Rendered in Monochrome by Color receiver.
   - (*c*) Rendered in Monochrome by STV receiver.
2. Broadcast in Color Signals with Color Bursts:
   - (*a*) Rendered in Monochrome by Monochrome receiver.
   - (*b*) Rendered in Color by Color receiver.
   - (*c*) Rendered in Color by STV receiver (Free).

B. "Special" or "Pay" Program: Broadcast without Bursts (Color Signals):

3. Received by Non-Subscribers (Free):
   (*a*) Rendered in Monochrome by Monochrome receiver.
   (*b*) Rendered in Monochrome by Color receiver.
4. Received by Subscribers: May be rendered by STV receiver in—
   (*a*) Monochrome, *without making pay or charge operation*; or
   (*b*) Color, *by making pay or charge operation.*

Note particularly: That under the Banning proposed system any non-subscriber member of the public may receive any "B" program ("Special" or "Pay" program) *without pay or charge, Free,* being thus on a complete parity with Subscribers to the Banning system, when such Subscribers do not desire to make payment or charge operation for the particular "Special" or "Pay" program. The benefit received by the Subscriber when he makes payment or charge operation consists of having the program rendered to him in *Color* instead of *Monochrome,* whereas the non-Subscriber is restricted to Monochrome reception.

C. Provision may be made for eliminating any "Commercials" from the audio (Sound) component of the "Special" or "Pay" Programs as received and rendered to Subscribers; such Commercials may either be allowed or disallowed on the renditions of such "Special" or "Pay" Programs as produced by Non-Subscriber receivers in the hands of the general public. This is a matter of policy to be decided by the F.C.C., or elsewhere.

D. Reception and rendition of the "Special" or "Pay" Programs by Non-Subscribers, in Monochrome, is as perfect a rendition as may be produced by the particular receiver when rendering any conventional or Non-Subscription Program.

Mr. MACDONALD. Mr. Brotzman.

Mr. BROTZMAN. Mr. Chairman, I want to take this opportunity to thank Mr. Banning for coming down here, at his expense, to present his testimony.

I note you have been practicing since 1910, which means you have been doing it for a long while.

I do want to thank you very much, Mr. Banning, for coming.

Mr. BANNING. I am very happy to come down. I was happy many years ago to be a classmate of Barrett O'Hara. We graduated from college in the same class.

Thank you very much, gentlemen.

Mr. MACDONALD. Thank you, sir.

The last witness is Mr. Robert McKinsey, president of WJRJ–TV, Atlanta, Ga.

STATEMENT OF W. ROBERT McKINSEY, PRESIDENT, WJRJ–TV, ATLANTA, GA.

Mr. MCKINSEY. Mr. Chairman and members of the subcommittee, I am William Robert McKinsey, president and general manager of WJRJ–TV, channel 17, in Atlanta, Ga.

I thank you for this opportunity to appear before you and express my views on the very important issue you are considering—subscription television broadcasting.

I come here before you to give the viewpoint of a UHF television broadcaster on subscription television programing. I will not leave you in doubt about where I stand—and where I believe almost every other present or future UHF broadcaster stands on this issue. I am in favor of subscription television and I urge this committee to do whatever it can to encourage its development.

By way of background, I am a graduate of Oklahoma State University, in three areas of study—in business administration, electronics, and music. During World War II, I was a major in the infantry, serving as communications director on the staff of the 2d Army.

I have been in broadcasting for the past 21 years, starting out in 1946 in Oklahoma where I built and commenced the operation of a radio station in Stillwater. Since then I have served in a variety of executive capacities with radio and television stations in Minneapolis, Baltimore, Rochester, San Antonio, and now in Atlanta.

I think it might be helpful in this discussion if I briefly describe the Atlanta market, a fairly typical one in which subscription television programing might develop if allowed.

We are the 19th largest television market, with over 800,000 television homes, according to the latest statistics. We have three VHF network-affiliated stations which have been on the air for approximately 20 years. There are three commercial UHF and two educational UHF channels allocated to Atlanta. One of the educational television channels has been operated by the Atlanta School Board for the past 9 years.

On September 1 of this year, we became the first commercial UHF station to go on the air. A construction permit has been issued for one of the other UHF channels, and an application is pending with the Commission for the third available channel.

Gentlemen, let me assure you that in a market like Atlanta it takes considerable nerve, courage, and financial resources to put a UHF station on the air in competition with the three established network affiliates. Our monthly cash requirements just to keep the station operating are approximately $65,000. It will be many months—probably two and a half years—before our monthly billings or income will match that figure, and we expect to absorb losses in excess of $600,000 before we cease to have a monthly cash deficit. How much longer it will take before we show an actual net profit on the books is anyone's guess. Is it any wonder then why we are looking for an opportunity to increase our income by providing the people of Atlanta with programing that is unavailable to them on the three network affiliates?

The most difficult part of a successful television operation is obtaining good programing that will attract viewers. If this is difficult for a network affiliate, think how much harder it is for me, under the circumstances and the present rules of the game which govern my operation. We are on the air from 4 to midnight, and while naturally we are trying to provide the most attractive programing available, I am frank to say that our present programing is not the type of program service we hope to render in the future.

When I go out shopping for programs, what is available on the shelf at a price we can afford to pay? I assure you, gentlemen, that shelf is rather bare, and all that's on it for me to buy are programs the network affiliates in Atlanta have rejected, very old movies which have been shown already five to six times in the Atlanta market, and reruns of old network serial and situation-type comedies.

I know you will agree that, if we are to perform a meaningful public service for the people of Atlanta by providing them with better programing than it is now possible for us to do, there must

be a new development in the marketplace. This is why we are interested in subscription television programing.

You gentlemen are very familiar with the FCC's proposed rule authorizing subscription television programing, and I know you have heard much about it from many witnesses during the past week, so there is no need for me to discuss it in detail. There are parts of it, however, which I would like to see modified.

For example, the five-station-market rule would have to be modified or waived in our case to permit us to broadcast subscription television programs in Atlanta, since, as I have indicated, we are presently only the fourth station on the air. However, I believe the proposed rule is basically sound and provides a good point of departure for further experimentation and innovation in subscription television programing—and I earnestly hope that the Commission will proceed to issue the rule.

Now, let's assume that the Commission does issue the rule and either as a result of modification or waiver of the five-station provision, channel 17 can commence to offer subscription television programs. What's going to happen? Well, for the first year there would be no significant change in our operation because I assume it would take at least that long to negotiate a contract with an equipment manufacturer who could provide us with the studio scrambling devices and the decoders required for subscription television broadcasting. But, at some point in the following year, I would hope we could commence some subscription programing. What our penetration of subscribers in the Atlanta market might be is obviously a matter of conjecture at this time.

I believe, however, it is reasonable to expect that at the end of 2 years, after we commence subscription programing, we might achieve a 10-percent penetration. In the Atlanta market, this would be about 80,000 homes. With this as my box office, I assure you will be able to provide a type of programing that is not now—and I do not believe ever will be available on the so-called free or conventional system. Operating within the framework of the proposed rule, we could provide our subscribers with the very best movies within a few months after their release.

As you know, Atlanta is very proud of its newly acquired status in professional football and baseball, and the Atlanta Falcons and the Atlanta Braves keep our new stadium filled, or nearly so, when they are playing at home. I would hope that we could bring to our subscribers the home games of the Falcons and the Braves which are not presently available on TV, with the exception of two or three out of 80 baseball games played at home each year.

I realize that, in the case of baseball, this would require a waiver of the Commission's 2-year rule on sports programing, but I would hope that, with the assurance of the Braves that they would continue to provide on "free" television at least the same number of games as they are now making available to the public, that the Commission would grant such a waiver.

Atlanta is a great community for college and high school sports, particularly football and basketball. Presently, with few exceptions, these games are not available for televising, for the simple reason that

the economics of the present system will not support their programing; or, in the case of Georgia Tech and University of Georgia, their football games cannot be shown on television because of NCAA restrictions.

I believe there would be a substantial demand to see Georgia Tech's and the University of Georgia's football games on subscription television and that the schools would find it in their interest to make them available, and that this could be done with the approval of the NCAA, and within the framework of the Commission's proposed rule.

We have an excellent repertory theater in Atlanta whose productions we could show on subscription television in prime time several times a month. As you know and I know, the network-affiliated stations in Atlanta are never going to devote their prime time to this type of programing. These three stations seek and must find an audience in the Atlanta market each night of more than 400,000 people. We will be able to show the productions of our repertory theater on a basis that is profitable both to them and to us if only 10,000 people are willing to pay $1 for the privilege, and I am confident that there are at least that many people in Atlanta who will do just that.

Now remember, I have only been talking about what we might do in Atlanta with 80,000 subscribers. If subscription television is permitted to develop throughout the country and a 10-percent penetration of subscribers is attained, the potential box office approaches 6 million people. Then the range of programing that might be offered runs the gamut of your imagination, and the very existence of this large box office will necessarily encourage the development of new talent in the creative arts.

The smash Broadway musical comedy can be brought to the homes of viewers across the country in its first year, whereas, now, people in Atlanta—and in every other city except New York, for that matter—do not have the opportunity to see a road show performance for more than 3 years after a big hit opens on Broadway; and it is 5 or more years before they can see the filmed version, and 10 to 20 years before they have the opportunity to see the filmed version on "free" television and, I might add, with 21 commercial interruptions.

Do you realize that when "My Fair Lady" opened in New York it played to standing-room-only audiences for 3 years and during all that time only 600,000 people in this entire country had the opportunity to see it? And at scalpers' prices I suspect the average viewer paid $25 for the privilege. If we had had nationwide subscription television, and a 10-percent subscriber penetration, and if only 20 percent of the subscribers tuned in, more than twice as many people throughout the country—at less than 10 percent of the price—would have had the opportunity to see that lovely work of art in one night than were able to see it in 3 years on Broadway.

To me, the case for subscription television seems so overwhelming it is difficult to understand why the Commission has not authorized it long before this. Everyone, including its opponents, recognizes the great benefits that might be derived from subscription television. But the opponents say that these benefits are outweighed by many alleged detriments, so that the net effect of subscription television is contrary to the public interest.

You have heard from many of these opponents during the past week and almost without exception they have represented a vested interest in the existing system. The opponents are easily identified. They are the networks, the network-affiliated broadcasters, and the theater owners. They are so content with the existing system, and the huge profits they are reaping, that they don't want to give me and other UHF broadcasters a chance to compete.

The principal argument advanced against subscription television is that somehow or other it will result in program siphoning so that people will have to pay for what they now see "free."

I might add that there is a form of economic siphoning going on right now with the networks and the stations outbidding me by many thousands of dollars, for example, for the movies that are approximately 2 to 3 years old. It is impossible for me to compete in the economic market in buying this type of programing.

One opponent said that once people pay to see a program, they will never again have the opportunity to see it free. The fact is once people have seen a program free they will never pay for it, and there is no possible chance that subscription television will succeed if it attempts to charge the public for the type of programs presently available on the so-called free system.

The FCC has gone to great length to devise restrictions on supscription television designed to prevent program siphoning. In my opinion, these restraints are unnecessary, since the economics of the marketplace will achieve the same objectives. Those of us who are interested in subscription television see it as an opportunity to provide the public with a supplement to the programing made available by the networks, and we know that unless we offer something truly new and distinctively different from what is available on the networks, we are doomed to an early failure.

Remember that under the Commission's proposal, whenever a station is offering a subscription program, it will do so in competition with the three networks at the very same time and in the very same market. How, then, can subscription television possibly succeed under such adverse competitive circumstances unless it is offering something genuinely different from what the networks are providing?

Representatives of the networks who have appeared before you have attempted to justify the many commercial interruptions which occur on their programs by saying that the income derived from these commercials is necessary to support the 25 percent of their programing devoted to news and public affairs. What I would like to know is how our station in Atlanta under the present system will ever be able to finance the type of news and public affairs programing oriented to the Atlanta community which I think the people in Atlanta deserve?

If we are able to broadcast subscription programs part of the day, I am confident we can do this at a profit, which will enable us to continually improve the balance of our program day when we are operating conventionally—and, in particular, to develop the very best in news and public affairs programing of special interest to the Atlanta community.

Gentlemen, I have talked only about Atlanta because this is the only market in which we are on the air. However, what I have said as a UHF broadcaster struggling to compete in the Atlanta market against

the three network affiliates applies to UHF broadcasters throughout the country.

The problems I face are the same ones that have caused many of them to go off the air and huge financial loss for those who have struggled to stay on the air. Subscription television will provide us with the means of providing healthy and vigorous competition with the network affiliates—from which the public is bound to benefit.

I urge you, gentlemen, to give subscription television a chance.

That concludes my statement.

Mr. MACDONALD. Thank you very much, Mr. McKinsey.

Obviously you acknowledge a prejudice and an understandable one for subscription or toll TV, whatever name you want to give it. But do you not think there would exist a problem of siphoning of programs?

Mr. MCKINSEY. I honestly don't think so, Mr. Macdonald.

Mr. MACDONALD. The argument has been made, and persuasively by some witnesses, that the good programs would tend to go, through the natural law of economics, to those who would pay to see the good programs, just leaving the really bad programs on so-called commercial TV.

I am not saying who is right or wrong about it but it is a problem in my judgment.

Mr. MCKINSEY. I believe the FCC would be watchful and certainly would have the authority to step in if this were to happen. I honestly don't think it will happen. Now the present networks are not able to present brandnew movies. I think they never will be. This would immediately destroy the box office value of a movie. But we would be able to do that, we would be able to put them on and 2 or 3 years later the people without subscription television would still be able to see those movies just as they do now.

Mr. MACDONALD. Mr. Brotzman.

Mr. BROTZMAN. Thank you, Mr. Chairman.

I will just acknowledge the fact that you have given us this testimony and thank you very much.

Mr. MCKINSEY. Thank you.

Mr. MACDONALD. Mr. Brown.

Mr. BROWN. I also want to thank you for your testimony. I am uncertain about where you are going to get the programing that you can't afford to get now if you have STV.

Do you really think you will get that much income from 10 percent of your market?

Mr. MCKINSEY. We would be putting our money on the line to the extent that we think we would.

Mr. BROWN. At what kind of prices?

Mr. MCKINSEY. I would say at approximately slightly under the price you would pay if you went to see the event in person.

Mr. BROWN. Let me ask you just two other questions if I may. You say the cost was $65,000 a month to stay on the air. Is that a minimum cost or are you a Cadillac kind of station?

Mr. MCKINSEY. This is a very minimal operation.

I have 22 full-time employees and three part-time employees as compared to, for example, WSB television which has 27 men in its news department alone.

Mr. BROWN. What would a station need to get on the air with UHF at a minimal cost? The other question after that is what does it cost to get this 10 percent of your market where they could watch pay TV?

Mr. MCKINSEY. The cost of getting on the air with equipment you are talking about and plant, that sort of thing?

Mr. BROWN. I don't want to ask you what it cost you to get on the air because you may not want to reveal that figure. What does it cost a UHF station to get on the air as a minimal figure?

Mr. MCKINSEY. The only direct experience is mine and I don't mind telling you it cost $1.2 million. There would be additional cost, not great, in the nature of maybe 6 or 8 percent more to provide our equipment with the necessary scrambling devices.

Let us say $1.25 million to put a station on the air with the maximum power which would be required.

Mr. BROWN. A minimum to get on the air, let us say, a very low cost UHF station, is about a million dollars, is that right?

Mr. MCKINSEY. Yes

Mr. BROWN. Another $75,000 to get into the STV business?

Mr. MCKINSEY. That is correct. Of course, that does not count the cost of decoders and that sort of thing which is a matter entirely——

Mr. BROWN. The subscriber bears that cost, does he?

Mr. MCKINSEY. The decoders would cost, I don't know what the market price might be at the time they are ready but anywhere from $75 to $120.

Mr. BROWN. Let us say $100. You want 80,000 of them. So you are going to have a cost of a considerable amount.

Mr. MCKINSEY. That is right. We would certainly pass along part of this cost. With the experiment in Hartford they tried it several different ways, charging the whole cost, I believe, a portion of that cost and in some instances not charging them at all to install the decoder.

We would have to arrive at some compromise here and probably arrive at maybe half of the cost as a so-called installation charge to the customer.

Mr. MACDONALD. I have just one last question.

Everyone always has one last question. Everyone says "My Fair Lady" could be seen by only hundreds of thousands of people. That would be true but how many "My Fair Lady's" will ever happen. You know it is hard to keep good programs on.

Mr. MCKINSEY. That is correct. On the other hand there was a show that opened and closed one night on Broadway this past season. If that had been available to subscription television, sight unseen, there would have been sufficient subscribers watching that brandnew Broadway musical, written and produced by top people, it had top stars, with just the advanced promotion they could have paid off what they call the net on that production in that one night and it could have continued to run on Broadway. Maybe they could have gotten over that hump. We might help the creative arts that way.

Mr. MACDONALD. Thank you very much.

Mr. MCKINSEY. Thank you, sir.

Mr. MACDONALD. At long last the hearings are closed.

(The following material was submitted for the record:)

STATEMENT OF KAISER BROADCASTING CORP.

Kaiser Broadcasting Corporation has a vital stake in the future of advertiser-supported television broadcasting. It now operates or is constructing four UHF television stations: KHJK–TV, San Francisco (request for call letter change to KBHK–TV pending); KMTW–TV, Corona (serving Los Angeles); WKBD–TV, Detroit; and WKBS–TV, Burlington (serving Philadelphia). In addition, it holds 50% interests in UHF Stations WAFT–TV, Cleveland (request for call letter change to WKBF–TV pending) and WKBG–TV, Cambridge (serving Boston). Moreover, Kaiser is considering the establishment of an advertiser-supported network, utilizing these stations as a nucleus.

If we believed that subscription television would destroy the advertiser-supported system, we would have every reason to oppose it. However, we have considerable confidence in the vigor and health of the advertiser-supported system. Our decision to invest large sums in television broadcasting rests essentially on that confidence. Moreover, we believe that carefully designed subscription television operations, of the kind represented by the TECO system, can offer new sources of programming and revenues to the television industry, and new program services to the public, without impairing in any way the vitality of advertiser-supported television. Accordingly, Kaiser Broadcasting Corporation has obtained an option to acquire a franchise for the use of the TECO system in the Los Angeles area.

More generally, Kaiser firmly believes that the public will be best served if new ideas are given a reasonable chance to prove their worth. The concept of subscription television has been subjected to exhaustive scrutiny by the Congress, the Federal Communications Commission, and the governments and courts of several states over a period of years. No one now proposes that responsible government authorities should close their eyes and permit subscription television operations to proceed on any uncontrolled, unscrutinized basis. The only issue is whether an idea which is still alive after so much study should be given an opportunity—free from artificial and unnecessary restrictions—to show in practice whether it can produce the public benefits that are claimed for it. We think subscription television has earned a right to that chance.

STATEMENT OF LAWRENCE H. ROGERS II, PRESIDENT, TAFT BROADCASTING CO.

Gentlemen, I appreciate the opportunity the Subcommittee has given me to share with you my thoughts on the serious problem of Pay TV. You have heard a great deal of testimony about numerous facets of that problem. I would like to focus on one facet which, in my judgment, is of controlling significance.

Pay TV forces vigorously contend that Congress and the Commission should let the people decide whether or not Pay TV is in the public interest by letting Pay TV freely compete with free TV. This invocation of the tenets free competition is chimerical and deceptive.

"Market determination," "consumer dollar voting" and "competition rather than regulation" are not barren shibboleths. They describe free enterprise—the American way. I believe in them, Taft believes in them and, I have no doubt, the members of this Subcommittee believe in them. Regulation is no substitute for competition. Regulation is appropriate only where competition cannot function.

That is the case here. Contrary to what Pay TV advocates would have us believe, the relevant arena of competition is *not* the competition between Pay TV and free television for audiences. Rather, it is the competition in the television program product market between free television and Pay TV for advertisers dollars, on the one hand, and the public's dollars on the other.

To illustrate the importance of this fact, assume that a nationwide system of Pay TV is permitted to come into existence and achieve the modest penetration of 15%. A first run film comes onto the market for television exhibition. Pay TV can show it in 7.5 million homes if it charges $1.00, yielding a gross revenue of $7.5 million. It therefore bids $5 million, knowing that, at that price, it can make a 50% profit.

No advertiser or group of advertisers, however, are willing to pay that much. For, based on their realistic estimates of the markets for the products which

they sell, the value to them of the advertising minutes which they would obtain during the course of the film's broadcast is less than $5,000,000.

The result is that, in the television program product market, Pay TV bids the first new film away from free television networks. But, from the point of view of American viewers, what is the result? They see the same film, but pay for it rather than receiving it free. If they cannot afford to pay, they will not see it. The public interest has been injured, not advanced.

Moreover, it makes no sense to say that we will meet the problem I have described by limiting those kinds or types of programs which Pay TV can carry. Definition of what is to be included and excluded is virtually impossible. Even the seemingly rigorous limits suggested in the FCC's Pay TV Report are loaded with loopholes, escape hatches, and opportunities for gimmickry and evasion. For example, as Mr. Lindow and Mr. Anello made clear, the apparent two year limit on Pay TV's siphoning off the sports programming now available on free television is illusory. Under the Pay TV Report proposal it would not take two years. It could be done in one year and, in many cases now.

We need look but a very short way into the future to foresee the time when most Americans will enjoy not only the programming of two or three major network affiliated stations, but also two, three, or even more independent UHF stations in addition to educational television stations. The availability, free of charge, of virtually every type and kind of television programming fare imaginable will be a reality. The specialized tastes of small groups of Americans will be served, as well as the wants and interests of the majority.

We know from our experience in major market radio that, as the number of stations increases, the amount of specialized programming, *e.g.*, foreign language programs or fine music, also increases. This will and is happening in television.

Washington, D.C. is a good example. Today, served by seven television stations, and soon to receive an eighth, our Nation's Capitol enjoys a wide diversity of programming fare, ranging from ballet to bull fights, from lacrosse games to symphony concerts, from Ed Sullivan to birth control lectures. I seriously doubt that there is a single interest or taste for which Pay TV could reasonably hope to program, as a practical economic matter, which is not today served by one of the seven Washington television stations.

It is true that the programs in which Pay TV will be most interested and for which it will pay the most are the World Series, professional football, first run films and top rated entertainment shows—he programs which all of us now enjoy without charge. But the Congress and the Commission cannot ignore Pay TV's threat to the countless educational and independent commercial stations now coming on the air throughout America. If Pay TV carries art films, ballet or opera, it will also directly deny that programming to free broadcasting.

I have heard it suggested that, because the Hartford experiment did not substantially injure local broadcasting, free television and the American people have nothing to fear. This is incorrect. The economic power of Pay TV to siphon programming from free television cumulates geometrically as Pay TV penetration grows. One isolated Pay TV station cannot bid programs away from free television. Many Pay TV stations can.

Pay TV does not, therefore, offer the American people a viable choice of programs. It offers them the requirement of paying for programs which would otherwise be free, or not seeing them at all.

The multi-million dollar competition between Pay TV executives and major advertisers will cast the die. The American people will only pay the piper.

COLUMBIA BROADCASTING SYSTEM, INC.,
New York, N.Y., October 23, 1967.

Hon. TORBERT MACDONALD,
Chairman, Subcommittee on Communications of the Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is submitted for incorporation in the record of your recent hearings on the subject of subscription television and on HR-12435. In submitting it, it is not our intention to burden the Committee with a repetition of the voluminous Comments and Statements which CBS has presented over a period of years before committees of the House and of the Senate, as well as before the Federal Communications Commission. We do, however, submit for your convenient reference, as attachment A, a copy of the Statement of Frank Stanton, President of CBS, before the Committee on Interstate and Foreign Commerce on

January 22, 1958, in which Dr. Stanton sets forth the basic position of CBS on the issue of subscription television, and, as attachment B, a copy of the Comments filed by CBS in FCC Docket No. 11279 on October 7, 1966, in which the results of the Hartford trial of subscription television are analyzed. We continue to adhere to the views there expressed.

We at CBS are encouraged that your Committee has undertaken its study of subscription television. We have always been of the opinion that the Commission does not have the authority under the existing statute to authorize subscription television and that the question whether it should be authorized is one properly for the Congress. As long ago as 1955, at the time of our First Comments in the Commission's subscription television proceeding, we said:

"When all of its elements are considered together, it must be concluded that pay television is a hybrid which defies classification under the statute because it does not fit within its framework. That hybrid character would make it impossible for the Commission to deal effectively with the regulatory problems which have been suggested. Any effort to solve these problems would carry the Commission far beyond the function delegated to it by the present statute. The problems of regulation involve serious social and economic questions, as well as questions as to the proper area for governmental action. Such questions should be answered by the Congress."

The need for Congressional intervention in this matter cannot be better shown than by reference to the *Proposed Fourth Report and Order*, devised by the Commission's Subscription Television Committee and currently under consideration by the Commission. The *Proposed Fourth Report and Order* not only illustrate the inability of the Commission to deal effectively under the existing statute with the regulatory problems presented by subscription television proposals but also presents in bold relief the grave issues of public policy which underlie such proposals.

The *Proposed Fourth Report and Order*—

reflects concern about the blackout of free television channels, capable of serving large audiences, for the purpose of devoting such channels to programming for the privileged few, but in attempting to limit the scope of such blackout, would permit an absolute monopoly for such operations in the communities where they would be permitted;

reflects concern over the cost to the public of subscription television but—operating under a statute that provides for no rate making authority over broadcast licensees—fails to make possible any competition between subscription television entrepreneurs which will protect the subscriber from price-gouging practices;

reflects concern that subscription television, if it succeeds, may permit a small but economically advantaged subscription television audience to siphon away many of the attractions which all members of the public may now see without charge, but proposes as a solution to such siphoning unprecedented—and we think unconstitutional—restraints which would forbid the presentation on subscription television operations of large categories of program material;

reflects concern for the scarcity of spectrum space and recognizes that wired services may have the potentiality for furnishing subscription television programming to the public, but makes no adequate assessment of the criteria which would justify the allocation of broadcast spectrum space to a service which—in the only test authorized by the Commission—has failed to demonstrate the presence of a significant public demand.

It seems clear that if the Commission were to adopt the *Proposed Fourth Report and Order*, or any similar proposal for a permanent nationwide system of over-the-air subscription television, it would have decided important issues of national communications policy which it is not empowered to decide under the authority previously granted to it by the Congress. Your Committee can make an important contribution by strongly reasserting the authority of the Congress in this area.

In so doing, we hope that you will agree that it is self-evident that the free television system, while sharing the imperfections of other democratic institutions, is an affirmative public good, both as a communications medium and as an integral part of the American economy and we would urge you not to take any action which would hazard its existence and vitality, certainly not in the absence of the most compelling showing that the public interest would be served by an alternative system. We believe that your inquiry into this matter will establish that the facts do not justify a finding that subscription television would be in the public interest.

If CBS may be of any further assistance in connection with your Committee's consideration of these questions, please do not hesitate to let me know.

Very truly yours,

LEON R. BROOKS,
Vice President and General Counsel.

ATTACHMENT A

STATEMENT OF FRANK STANTON, PRESIDENT, COLUMBIA BROADCASTING SYSTEM, INC., BEFORE THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, JANUARY 22, 1958.

Mr. Chairman and members of the committee, my name is Frank Stanton. I am President of the Columbia Broadcasting System.

In the interest of conserving the time of this Committee, I ask permission to submit, for the record, the Comments that we have filed in the pay television proceedings before the Federal Communication Commission. I also ask permission to introduce into the record an analysis of pay television, "Free Television and the American People." We prepared this for a meeting last week with the affiliates of the CBS Television Network.

CONGRESS IS THE PROPER FORUM

With all deference to the FCC, I am comforted by the feeling that the issue of pay television is now in the proper forum. The Comments which I am submitting for the record set forth the reasons why our lawyers entertain profound doubts that the Commission has the power to authorize or regulate pay television. Quite apart from the legal considerations, however, pay television involves a question of national policy in which the public has an enormous stake. As I will develop in the course of this statement, public tests are inadequate to resolve the issues in this case. Therefore, we stand in the right place now when we ask the Congress, as the representative of the people, to decide the fundamental public policy question of pay television.

Now, let me state in most summary terms: first, the position of CBS on pay television and second, the reasons for that position. Then, I shall move as quickly as possible to a statement in somewhat more detail of the basic question before this Committee—the question of a public test, and why we believe that such a test, whether limited or unlimited, is fundamentally fallacious.

THE CBS POSITION ON PAY TELEVISION

The basic position of CBS is this: We are for free television. We are for it as it is today and as we are confident that it will develop and improve in the future.

Since we are deeply convinced that pay television and free television are incompatible, our stand for free television means that we necessarily must be against pay television. We believe that it is impossible to be for both, because there can be no coexistence between pay television and free television as we know it.

Therefore, we support legislative action which would prevent administrative authorization of the use of the free airwaves for pay television, until the Congress itself has granted that authority.

I should make clear that our position concerning closed-circuit or wired pay television—which I do not understand to be before this Committee and which is not before the FCC—is a little different. Closed-circuit pay television does not involve the use of the airwaves dedicated to free television. We feel that for us to seek prohibitory legislation would put us in the position of asking Federal protection from competition which does not use the airwaves which free television has done so much to develop. Therefore, we do not ask for legislation which would prohibit closed-circuit pay television. Nevertheless, I would point out (1) that closed-circuit pay television proposes to ride piggy-back on free television since it must use existing television sets which were bought to receive free programming; and (2) except for the fact that closed-circuit pay television would not directly black out the airwaves, it will have all the same injurious effects on free television as will over-the-air pay television.

THE REASONS FOR CBS' OPPOSITION TO PAY TELEVISION

We do not believe that our own ultimate economic interests are at stake in the resolution, one way or the other, of the issue of pay television. If the Con-

gress should decide that pay television is in the people's interest, and if pay television then begins to take hold and to supplant free television, we shall participate in it, if we must, to survive economically. We would have all the facilities, the know-how and the experience for providing entertainment on the television screens in the American home. If we must go into it, we believe we would get our fair share of the multi-billion dollar bonanza which the pay-television promoters portray.

So we do not think that the economic fate of CBS Television hangs in the balance on the issue. But we do believe that the fate of free television as we know it today does hang in the balance. We believe that the major—the only important—stake in the issue is the public's. We believe that if pay television becomes a reality, not we, the networks and the broadcasters, but the people will be the losers.

Since other witnesses have already ably stated the reasons against pay television, I want to review briefly why we have become convinced that the public would most surely be the loser if pay television goes forward and should succeed.

Pay television, by its very nature, must be essentially subtractive rather than additive. It is subtractive because it proposes to use channels now dedicated to free television. Each time a scrambled signal goes over the air, it necessarily blocks out a free signal. Thus ultimately here in Washington, for example, pay television would use Channels 4, 5, 7 and 9—not the unused ones in between because those are occupied in neighboring population centers.

Pay television is also subtractive because of its enormous potential for siphoning programs from free television. It cannot and will not limit itself to "new" programming not now on the air. It must turn to the programs, the people, the talent now making up free television. And with the enormous number of dollars which just a small minority of the audience can bring in, pay television will most certainly be able to take those free porgrams away. It will have to do so if its promoters are to amortize their tremendous initial costs.

But I need not labor the point, for the pay-television promoters have already made it for me. It is they—not we—who have talked about seizing baseball, professional and college football, star talent and plays from free television.

I agree that the World Series might be one of the last programs to go, but what the lawyers for the promoters say to you about the World Series is different from what the promoters say to prospective investors. Telemeter recently said: "The World Series in the future conceivably will be able to gross as much as $25,000,000." (They were talking about pay television.)

The siphoning process has nowhere been summed up more simply than by the only station applicant which has filed with the FCC for a license to go forward with pay television. That applicant has said: "We ask merely for the authority to sell, if we can, something which is now being given away." I cannot say it any better than they have said it.

The consequences of pay television will be a real misfortune for the American people. Viewers will have to pay for what they now receive free. And for the first time, television, now a democratic unifying force, will be divisive. Where now the best in television is available to all Americans, pay television will fence off the best for the carriage trade. One prosperous viewer can pay—and deprive a dozen of his neighbors of the programs they are now enjoying.

The costs to the American people will be enormous. Each family would have to buy or rent a decoder costing between $40 and $85.

On top of that will be the charges for programs. To watch pay television for two-thirds of the number of hours that it now actually watches free television, the average family would have to pay $473 a year. This is seven times what the average family spends annually on shoes; three times what it spends on heating and lighting its home; and, more than it spends on all medical and dental bills, plus all drugs and medicines, plus all cosmetics and shaving suppies, plus all dentifrices.

Even if we take a figure of only $100 a year, which has been suggested by the pay-television promoters as the anticipated average collection per family, that amount is more than three times what the average family now spends for all admission fees put together, and substantially more than it spends for shoes. And for this $100, at an average of 50 cents an hour, the family would get only four hours of viewing a week—which is only a little more than one-tenth of the time it now devotes to free television.

Again, not we, but the pay-television promoters have put this problem of cost to the American family most forcefully. "We can," said an officer of Telemeter, "nickel-and-dime them to death."

Those, briefly, are some of the reasons why we feel compelled to oppose pay television: it will black out free channels; it will siphon away free programs; and it will divide the audience along economic lines.

THE FALLACY OF THE TEST

Let me turn now to the imminent issue—the issue on which the controversy concerning pay television has tended to focus. That issue is whether there should not be some sort of test of pay television. I think that perhaps confusion arises out of the fact that different people are talking about different tests—and sometimes the same people are talking about different tests at different times. And nobody has really stopped to analyze what, if anything, needs to be tested or how success or failure can be measured.

What I want to do now is to demonstrate: first, that no test is necessary; second, that the entire concept that there can be a democratic public choice with respect to pay television is fallacious; and third, that the test proposed by the FCC cannot achieve the Commission's objectives.

A TRIAL IS UNNECESSARY

You have been told that a trial is necessary because the FCC lacks the decisional facts required to determine whether pay television would be in the public interest. But the decisional facts sufficient to justify denial of the pay television proposals are available in abundance.

There is no dispute with respect to the blackout of free channels. When a station is broadcasting pay television, it is blacked out for those who want to see free programs.

There is no dispute with respect to divisiveness. It must be clear that the prosperous family will be able to view more programs than the average family.

There is no genuine dispute with respect to the siphon. The pay-television promoters have said, over and over again, that they intend to put on the air the mass-appeal attractions which are now on free television. And the FCC itself has stated in its Report "that some kinds of programs hitherto available under the present system would probably be subjected to a charge on the viewer." Indeed, ordinary common sense shows that producers, stars, writers, motion picture companies and others will respond to the lure of higher pay just as everybody else does. If they can make more money out of pay television than out of free television, they will move to the greener pastures.

In addition, it is clear that people would rather see a baseball game free than pay for it. And all available evidence indicates that people would pay for the programs they like best if they could not get them without paying. A Gallup Poll found that 31 percent of those interviewed said that they would pay for the Ed Sullivan Show if they could not see it free. Surveys by Politz, Pulse, Roper, and the major league baseball owners have reached similar conclusions.

On the other hand, there is a striking absence of decisional facts to demonstrate the advantages of pay television. The briefs led by the proponents' lawyers contain only the vaguest and most illusory promises. No principal of any major proponent has appeared before the FCC or this Committee. Where a small group of people are proposing a scheme which bears within it so much danger and disadvantage to the public, one wonders what has happened to the old-fashioned concept of asking a proponent to meet a burden of proof.

The Canadian Royal Commission on Broadcasting, a Government body composed of distinguished citizens, had these same proponents before it. This Commission had no difficulty in making the predictions which resulted in their rejection of pay television. They said "subscription television would tend to canalize for its own use the great popular programmes now offered free to the viewing public."

We feel that the decisional facts for free television and against pay television are clear. A test is unnecessary. An informed decision can be made now.

A TEST CANNOT ESTABLISH MAJORITY PUBLIC CHOICE

Not only is the test unnecessary, but the very concept of a test is, in this case, fallacious. The broad argument is made that America is built on new enterprises which must have an opportunity to succeed or fail in the market place. Therefore it is urged that the public should be permitted to decide the fate of pay television by accepting or rejecting it. This sounds overwhelmingly sensible

and in the best traditions of free enterprise. But, in this case, it just doesn't work out.

There are two reasons for this, First, there is no majority choice involved. Nobody is proposing that the test be whether a majority of the people want pay television. That is a test which pay television cannot meet.

The concept of a test by public choice in the market place is nothing more than a test to determine whether pay-television promoters can make money. This is only a test of whether a minority will pay enough to make pay television profitable. But proving economic profitability does not prove public interest. We know right now that it is not in the public interest to permit one viewer to black out a dozen.

Second, there is a vital distinction which destroys the analogy involving competition between new and traditional products. Let me demonstrate this with some examples. The ball point pen competes with the fountain pen and the electric razor competes with the safety razor. But, although the ball point pen is a competing means of writing, it does not prohibit the founain pen from occupying a place in a pocket. The electric shaver is a competing means of shaving, but it does not forbid the safety razor from occupying a place in the medicine cabinet. There is a crucial distinction between pay television and such examples; pay television does propose to occupy the scarce television channels dedicated to public use. It does propose to oust free television from these very channels.

It is these fundamental distinctions which make the notion of a people's choice during a test of pay television wholly unrealistic.

THE TEST PROPOSED BY THE FCC

I originally came here to oppose the Commission's Report, which set forth the conditions of the test. I have since learned, from statements made before you last week by members of the FCC, that the conditions will be varied from case to case and improvised from station to station as applications are processed, without continuity, uniformity or certainty.

It seems to me, however, that I must initially take the Report at face value. It is our conviction that the so-called test there proposed is neither limited nor controllable and that, in fact, it is no test.

According to the Report, each pay television system may operate in three of more than 20 eligible areas. These areas include more than 40 different cities in which stations, assigned to those cities, are actually on the air. In these areas are the largest markets in the nation, precisely where the advocates of pay television have said they want to operate if there were no restrictions at all.

There is no limitation on the number of pay-television systems. Five have already been proposed, and more may be feasible. The so-called test could, during its duration, become effective in all 20-odd markets. On the assumption that only the three principal proponents will elect to participate and that they will decide to operate in the nine largest markets, 15 million television families—36 per cent of the nation's total—will be within the test area.

The period of the trial authorization is three years. The Commission has stated in its Report that it would not terminate the tests before the three-year period without evidentiary hearings; and that it might permit them to continue, after the three years, during the time required to conduct hearings, and reach a final decision.

The Report places no restrictions on the number of stations in a market which may participate, or on the number of hours during which each station may broadcast pay programs (except that it must broadcast 28 hours of free television a week), or on the times of day during which pay programs may be broadcast, or on the prices that may be charged to the public, or on the kinds of programs, or on the use of advertising.

The Commission stated in the Notice which preceded its Report that it did not want to encourage "inordinate investment" during the trial. But it has done just that. If only the nine largest markets were involved, the cost of equipping only 1 out of 4 of the television homes in the test area with decoders would, on the assumptions most favorable to the proponents, be just under a quarter of a billion dollars.

In addition, huge investments would have to be made, largely by local businessmen, in establishing and maintaining the expensive organizations for distributing decoding information and collecting program charges. All of these expenses the public would, of course, be expected to bear in one way or another.

These inordinate investments will inevitably generate their own pressures. It will be extremely difficult to terminate this test and, thus, to destroy these enterprises and investments.

I am not under the illusion that the test will immediately bring about all of the evils of pay television or that it will demonstrate the full power of a permanent authorization. But during the trial, the power to siphon will be present. If only ten per cent of the television families now viewing the Ed Sullivan Show in the nine-market test area paid 50 cents for the program, the promoters of pay television could pay the stations, take $100,000 for their own costs and profits, and still offer the talent appearing on the show 2½ times what is now being paid.

Certainly, during the protracted period of the test, the blackout will be in operation. This would be true even if only one station in the eligible markets were broadcasting pay programs. In many of the eligible markets there are rural, outlying and fringe areas of considerable extent which receive Grade A service from only one of the four (or more) stations serving the area. For instance, in the Milwaukee area, if WISN–TV went to pay television, approximately 180,000 people would lose their only Grade A free service during the period of pay operations. The shift to pay television by a single station in each eligible test area will deprive, in total, more than one million people of all free Grade A service.

Beyond this, there is nothing in the Report to prevent all of the stations in the market from presenting pay programs at the same time during the peak viewing hours of the evening, and during that period from producing a total blackout for everybody in the market.

Broad as this test is, it may not show the full impact of pay television on free television. It is reasonable to expect the pay-television promoters to be on their best behavior pending full authorization. They may indeed occasionally give us differential calculus, as they have promised, instead of Jayne Mansfield. They may indeed leave Perry Como and the World Series alone. With so much at stake, self-restraint would simply be self-preservation.

An attempt to pass judgment on the ultimate programming of pay television on the basis of a trial is like attempting to write a book on child behavior based on the actions of children during the week before Christmas. But here the stakes are not a tricycle or a doll—they are $6 million a year. The proponents will have the incentive, the resources, and the patience to walk carefully.

Thus far, I have been discussing the proposed test specified by the FCC Report. When appearing before this Committee, however, members of the Commission stated that they might depart from the Report and adopt varying rules on an application-by-application basis.

In these circumstances, it is difficult if not impossible for us, or this Committee, to assess the test since its rules are still being improvised. But even to the extent that the improvisation has begun, new difficulties have already emerged. For example, although no such limitation appears in the Report, the Chairman of the FCC indicated that all stations in a market might not be permitted to participate in pay television and that he might be reluctant to grant the last two or three applications in an eligible area. If this suggestion should be adopted, a built-in incentive to abandon free television would be provided. The first station to apply might have an advantage to the point of monopoly by squatters' rights. It would put a premium on early desertion from free television. The stations which remained loyal to free television would be subject to the great risk of being frozen out of pay television.

In any event, it would appear that the FCC is improvising new rules which cannot result in a meaningful test. For example, if it will not grant the applications of the last three stations in a market, or if it will allocate different hours to different stations in the same market, it may well alleviate some of the evil consequences of the test. But by the same token, it will have robbed the test of all possible validity for it will have made it impossible to prove the basic point at issue—the impact of pay television on free television.

CONCLUSION

To launch an explosive missile from Cape Canaveral over the lonely wastes of the ocean is an experiment. To drop that missile on Pennsylvania Avenue is not an experiment. The impact of the so-called pay-television experiment which is proposed will have immediate effect upon 15 million television families.

The Commission apparently believes that after inordinate investments have been made, after pay television has been in operation for years, after artists

and producers have been accustomed to vastly higher pay, after millions of viewers have become habituated if not reconciled to the pay system, hearings will be held to determine whether the fait accompli created by the Commission should be reversed. It may well be too late at that point to reverse the course of history. People will be paying to unscramble pay-television signals, but the pay-television test itself will be hard to unscramble.

The difficulties of these tests are not difficulties of details; they cannot be fixed by a little patching here and there. These difficulties are symptomatic of the fundamental fallacy and impracticability of the basic concept of these tests.

Forty-two million American families watch telveision on an average of five hours a day. They have invested $22 billion on the assumption that they would continue to have free access to the channels which have been dedicated to the public use. We feel that the investment and the reliance of the public in these airways deserve Congressional protection.

In the final analysis, there is no easy way out—the matter has to be voted up or down. Tests provide no escape from decision. The decision can be reached by analysis and expert judgment. That must be done here—by you gentlemen who represent the people.

ATTACHMENT B

Before the Federal Communications Commission, Washington, D.C.

Docket No. 11279

IN THE MATTER OF AMENDMENT OF PART 73 OF THE COMMISSION'S RULES AND REGULATIONS (RADIO BROADCAST SERVICES) TO PROVIDE FOR SUBSCRIPTION TELEVISION SERVICE

Comments of Columbia Broadcasting System, Inc., October 7, 1966

I. INTRODUCTION

In its First and Third Reports in this Docket, adopted on October 17, 1957 and on March 23, 1959, respectively, the Commission declared that it was in no position to determine whether the adoption of subscription television would be in the public interest "without the benefit of any significant demonstration of the proposed systems in operation". (*First Report*, para. 47)

Now, almost nine years after the Commission first determined that a trial of subscription television was necessary and should be authorized, the time has come to assess the result of the only trial which was had pursuant to the Commission's action, that which began in Hartford in June 1962.

On the basis of that trial Zenith Radio Corporation and Teco, Inc. (herein referred to as "Petitioners") requested the adoption of rules authorizing subscription television on a nationwide basis and contend that the trial demonstration has now provided a sufficiently adequate basis for concluding that an authorization of subscription television would be in the public interest. The Commission adopted on March 21, 1966 a Further Notice of Proposed Rule Making and Notice of Inquiry in this Docket inviting interested parties to comment on whether subscription television should be authorized on a permanent nationwide basis and, if so authorized, on the possible conditions and limitations which might be appropriate. The Notice invited parties to "focus their comments particularly on whether permanent nationwide subscription television would be in the public interest . . ." and on the issues directly relating to that question (*Notice*, para. 44). In addition, in its Notice of Inquiry, the Commission for the first time in this Docket requested comments as to "the appropriate Federal role, if any, with respect to the establishment and manner of operation of wire or cable subscription television, and how that role should be effected." (*Notice*, para. 48).

We submit that the results of the trial do not support the conclusion which Petitioners urge. If anything, they demonstrate that the public interest would not be served by the Commission's authorization of subscription television and they do so in more dramatic terms than we could have anticipated.

The Hartford trial shows that subscription television would *not* provide a beneficial supplement to the program choices now available to the public through free television but in fact would be duplicative of the programming of free television.

The Hartford trial shows that subscription television furnishes programming aimed almost exclusively at the mass audience, that any hopes that it would

be a vehicle capable of furnishing significant artistic, cultural or informational programming for minority interests were without foundation and that free television in fact is better suited by far to perform this function.

The Hartford trial, while resulting in a clear-cut failure to achieve any significant degree of audience penetration and casting doubt on the viability of subscription television, nevertheless prompts Petitioners to project audience penetration levels which would enable subscription television to bid away from free television selective mass appeal attractions which free television now offers to the public.

And, finally and importantly, the Hartford trial shows that subscription television would furnish such attractions for pay to an audience which would for all practical purposes exclude the economically less advantaged 30% of the nation's population.

We note that the Petitioners rely exclusively on the Hartford trial and contend that in every respect it has established an adequate basis for the permanent nationwide authorization of subscription television. In that connection we note the statement of Petitioners that since the Commission's Third Report adopted on March 23, 1959 the ". . . only new facts developed concerning broadcast subscription television . . . are those available from the Hartford subscription trial." (Petitioners' Comments, p. 69) We would point out that additional "new facts" necessarily arise from the changes in the broadcast environment during the past seven and a half years, particularly those relating to the program choices which free broadcasting—both commercial and educational—offers to the general public, and we propose to relate such changes as well to the public interest issues which are at stake.

In response to the Commission's Notice of Inquiry with respect to wire or cable subscription television, our comments will urge that the Commission does not have jurisdiction over a system of subscription television not using the broadcast spectrum, for the same reasons expressed in our comments in the CATV proceeding, Docket No. 15971.

II. THE HARTFORD TRIAL SHOWS THAT SUBSCRIPTION TELEVISION, FAR FROM PROVIDING A BENEFICIAL SUPPLEMENT TO THE PROGRAM CHOICES AVAILABLE TO THE PUBLIC ON FREE TELEVISION, WOULD DEVOTE ALMOST ALL OF ITS PROGRAM TIME TO TYPES OF PROGRAMS DUPLICATIVE OF PROGRAMMING OFFERED IN QUANTITY BY FREE TELEVISION

The most important single issue before the Commission is whether subscription television would provide, in the Commission's phrase (*Notice*, para. 15), "a beneficial supplement" to the program choices now available to the public through free television. If it would, doubts which arise as to other public interest aspects of subscription television operations might conceivably be resolved in its favor. But if a subscription television operation in any community will merely duplicate types of program offerings already available to the public in quantity on free television, it would not appear that any other considerations of public interest could justify the authorization of such a service using broadcast channels.

Some confusion is discernible in the Commission's Notice as to the distinction which is drawn between programming which beneficially supplements free television and that which duplicates its offerings. The Commission's Notice (*Notice*, para. 12) appears to accept Petitioners' underlying assumption that if subscription television offers programs which, as individual units, were not available on free television its function would be supplementary. Elsewhere in the Notice (*Notice*, para. 42) the Commission invites "comments on whether there should be any limitation on the *type* of programming that subscription operations may present, and if so, what *types* should be excluded, or how a line might be drawn to determine what *types* of programs could be shown and what could not." (Emphasis added.) Surely the whole thrust of the Commission's concern over the threat posed to free television is not whether subscription television can at times present individual programs not otherwise available to the public—any network or individual station licensee often does present programs not otherwise so available—but upon whether, taken as a whole, subscription television operations will provide "a different service from that of conventional television . . ." (Notice, para. 42).

Petitioners themselves are confused or disingenuous with respect to this distinction. While generally urging that their programming constituted box office attractions not otherwise available on conventional television Petitioners,

in specifically addressing themselves to whether subscription television should be limited to programs of a box office nature, define such programs as follows (Petitioners' Comments, p. 64):

"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." (Emphasis added.)

We propose, with this distinction in mind, to ask whether the programs in fact presented to the public during the Hartford trial [1] constituted, by any reasonable test, a beneficial supplement to the programming offered by free television.

A. Feature-Length Motion Pictures

Petitioners ask the Commission to accept the proposition that a programming schedule in which 86% of the time is devoted to the broadcast of feature-length motion pictures—each film, on the average, broadcast more than three and one-half times—is a beneficial supplement to the program choices available on free television. No reference is made by Petitioners to the fact that feature films were then and are now abundantly available on free television and a reader of their Comments, unmindful of free television programming, might well believe that the nation's television stations do not offer high quality feature films to the public.

We have made no calculation of the number of feature films which were in fact presented on free television in Hartford during the trial period but the three nationwide commercial networks offered to their affiliates in Hartford a total of 160 feature films during that time.[2]

It may therefore, be useful, since Petitioners' claims rest almost entirely upon the nature of the feature film product which they sold to subscribers, to analyze their product in some detail.

Of 432 feature films presented during the trial period only one, an obscure British film, is listed by Petitioners under "First Run Films". An additional 116 are listed by Petitioners under "First Subsequent Run Films (Shown several weeks after first theater run)". These 117 films, as the listing indicates, were presented to subscribers during the period of their release in motion picture theaters. The remaining 315 films, however, comprising 297 films characterized by Petitioners as "Older Feature Films (Over 6 Months in Theater Release)" and 18 films characterized as "Foreign-Language Films", and representing 73% of the total number of feature films presented, included films released to theaters as early as 1940 and, on average, were first released in theaters in 1960.[3]

If we are to rely on the information disclosed by Hartford, and not on mere speculation, the question presented is a concrete one. In its consideration of the subject, the Commission has consistently assumed that the feature films to be offered by subscription television would be so-called "first run feature films", noting that "first run feature films have not, with rare exceptions, been made available for television broadcasting". (*First Report*, para. 50). The Commission observed that such films would not be likely to become available in the foreseeable future for free broadcasting and concluded: "Thus, to the extent that first run film might become a substantial feature of on-the-air transmissions they would provide a kind of entertainment not now generally avaliable to the television audience."

Even if we treat "First Subsequent Run Films" as fully satisfying the Commission's expectations we would still find that only 27% of the films presented to the Hartford subscribers did so.

In this respect itis worth noting that the Hartford trial confirms what we in television already know—that the public will view high-quality films even though they are not shown on television for some time after theatrical release. Petitioners who originally placed great reliance on the ability of subscription television to bring to the American public feature films while the negatives were not yet dry, are silent about the fact that, of those films shown in Hartford obtaining a cumulative subscriber viewing percentage of over 30%, 43 were listed in Petitioners' Exhibit 1 as "First Subsequent Run Films (Shown several weeks after first theater run)" while 47 were "Older Feature Films (Over 6 months in theater

[1] Since Petitioners' Comments include detailed data only as to the first 104 weeks of the trial we have confined our analysis to the programming offered to Hartford subscribers during that period. Programming references to the "trial period" herein are to such 104-week period. We are not aware of any contention that programming offered during the third year of the trial differed in any material respect.

[2] Source: Broadcast Information Bureau.

[3] *Id.*

release)". Thus, it would appear, the Hartford subscribers placed greater stress on film quality than they did on film release date.[4]

Upon analysis, it appears that of the 432 films for which the Hartford subscribers spent 83% of their dollars (Petitioners' Comments, p. 19) 228 have since been released to free television.[5] Of these 76 had been released prior to the end of the second year of the trial period. It therefore appears that, to a very large degree, the advantage which subscription television promises to the public is not that it will receive programs of a *type* not otherwise available on free television but that, for a price, subscription television will somewhat accelerate the presentation of feature films to the public.

The Hartford findings serve to underscore the plain fact that the function of reducing the lag between theatrical and television release dates is hardly important enough to warrant the use of broadcast channels for a system depending almost completely on such fare.

There is, moreover, every indication that the function which subscription television might perform in somewhat accelerating the availability of feature films is becoming of even less significance as free television continues to develop its potential. When the proceeding in this Docket was first begun, it may have been possible to argue, as subscription television proponents in fact did, that feature films available on free television were older features, of comparatively minor calibre, many of them obtained from foreign sources. This was due to a combination of reasons, among them the inability of free television circulation to support the costs of film rights, union and guild restrictions on the use of recent films and, not unimportantly, the belief of major film producers and distributors that subscription television, or a variant thereof, would replace the theater box office and be a new market for their output of current films as well as for their backlog of existing films.

However the number of major theatrical feature films released to free television increased rapidly during the late 1950's and that increase continues today. There are presently more than 12,000 feature films released for free television broadcasting.[6] During the current (1966–67) season 120 feature films of high calibre have been scheduled for television broadcast by the networks alone. These include such outstanding films as Fail Safe (1964), the Bridge on the River Kwai (1957), Music Man (1962), Bye Bye Birdie (1963), Advise and Consent (1962), Breakfast at Tiffany's (1961), Lilies of the Field (1963), a Raisin in the Sun (1961), Two for the Seesaw (1962) and the Ugly American (1963).

Thus the progress of events since the Commission's First Report and Order in 1957 has almost completely negated the prime program claim of subscription television.[7]

B. Sports

Other than feature films the audience attraction of greatest popular appeal to the Hartford subscribers was the presentation of spectator sports. This type of programming occupies a significant portion of the program schedules of both network and independent stations throughout the country. Indeed the sports diet offered on free television—comprising as it does professional baseball, football, basketball and ice hockey games played in the professional leagues, together with a heavy schedule of championship golf, college football, bowling, as well as outstanding attractions of tennis, track and field and lesser sports—has led some observers to question whether the American public can continue to absorb so large a quantity of sports programming.

Again, as in the case of feature pictures, Petitioners' real claim is not that the Hartford trial presented programming of a different type than that available on free television but that it presented a number of specific sports events which in fact were not carried by free television. We concede the contention of Peti-

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[4] This phenomenon was recently demonstrated by the huge audience obtained for the network showing of a 1957 feature, The Bridge on the River Kwai, which was estimated to have been viewed by 60 million people. *Variety*, September 28, 1966.

[5] Source: Broadcast Information Bureau.

[6] *TV Feature Film Source Book*, Vol. 7 (1966).

[7] This fact has not been lost on outside observers. Columnist Jack Gould in the *New York Times* of September 28, 1966, commenting on the recent decision of major motion picture producers to agree to release large additional blocks of feature films to the networks, wrote: "As a result of the separate agreements, more than 112 features, including so-called 'blockbusters' that commanded record box-office grosses in theaters, will be reaching the home screen over a period of five years." Mr. Gould had reference to acquisitions announced in late September 1966 by CBS and ABC. The CBS films, to be acquired from MGM, include at least 14 films released to theaters in 1965 and 1966.

tioners that heavyweight championship boxing has been absent from free television for a number of years. This is due partly, as Petitioners note, to the fact that promoters of such fights have found it more profitable to distribute them to closed-circuit theater outlets and partly, we believe, because of a variety of other factors, including the quality of the bouts themselves and the unhealthy aura which has surrounded heavyweight boxing in recent years. The other sports offered to Hartford subscribers are all seen regularly and frequently on free television and Petitioners' contention with respect to such sports essentially boils down to an assertion that subscription television could circumvent existing limitations imposed by college and professional sports organizations to protect teams from the loss of gate receipts in their home areas. Thus Petitioners urge that subscription television could carry local and regional college football games in "which there is a strong local interest without being restricted to the so-called 'game of the week' now permitted by NCAA" (Petitioners' Comments, p. 14) and that "one of the major sports program supplements which subscription television could provide in . . . cities having major league professional baseball or football would be the broadcast of home games" (Petitioners' Comments, p. 15).

Even Petitioners' contention that a "home game" is a box office attraction not available on free television is not entirely correct. In New York City, for example, the Yankees' and Mets' home games have long been carried on free television, and the experience in New York and elsewhere suggests that whatever adverse effect, if any, the televising of home games may have on the box office is offset by receipts from free television as well as heightened interest in the sport. Indeed, in some major league cities there is evidence that home games are being kept off free television in anticipation of some form of subscription television.[8]

Passing the question whether home games will, with the passage of time, become more generally available to free television, we believe that the restrictions imposed by college and professional sports represent at this time a reasonable accommodation of conflicting economic and social interests, an accommodation, in the case of major professional sports, recognized and confirmed by Federal legislation which sanctions the black-out arrangements.

If the offering by subscription television of such home games be regarded as a supplement to the sports fare being offered in large quantities by free television, is it so beneficial as to justify an authorization of subscription television in the public interest? An audience accustomed to see "home games" of a professional football, baseball or basketball team on subscription television would, of course, have an undiminished desire to continue to see the "away games" of their home team, now generally available on free television. If subscription television was able to make home games available to subscribers it would appear probable, not only that it would bid away from free television the right to import "away games", but that it would no longer be advantageous for it to permit audiences to be diluted by permitting free television to import distant games of other teams. It strains credibility to believe that free television could continue to obtain the rights to these events under such circumstances.

C. Special entertainment, cultural, educational and informative programming

We have dealt in the above discussion with motion picture feature films and sports presentations which together, according to Petitioners' Comments, made up 91% of the first two years of Hartford subscription television programming, accounted for 95% of subscribers' expenditures and for 96.3% of the number of subscribers viewing all offerings of subscription television during the Hartford trial. We have urged that in these two categories subscription television is duplicative of free television programming and not supplemental to it.

We turn now to the remaining programs presented during the Hartford experiment—programs which Petitioners divide into two general categories, "Special Entertainment Programs" and "Educational and Instructional Programs". These furnish a crucial test of whether the authorization of nationwide subscription television would be in the public interest. For the bright promise of subscription television was never that it would be devoted almost entirely to presenting mass appeal programming to the American public and certainly not that it would preempt such programming from free television. Its greatest appeal to all critics and students of the television art, as well as to the Commission itself, has been the allegation that "subscriber financed broadcasts could

[8] Thus, for example, in Los Angeles and San Francisco, home game broadcast rights were granted by the Dodgers and Giants to the now defunct Subscription Television Inc.

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." (*First Report*, para. 48) It should be clear from the Hartford trial that this bright promise was merely an illusion.

Even a casual review of the 35 "Specially Produced Entertainment Features" listed by Petitioners as presented during the trial period shows that they are of a type which free television presents in abundance through programs of outstanding excellence.

The light entertainment items on the list—the Kingston Trio, Eddie Fisher in Las Vegas, The McGuire Sisters, The Limelighters, etc.—obviously are attractions of a type familiar to viewers of free television. Excluding regularly scheduled variety programs on which such talent is commonly utilized we point out that among entertainment specials presented by the networks during the trial period were The Bing Crosby Show with Mary Martin, The World of Benny Goodman, Richard Rodgers Concert with Diahann Carroll, Peggy Lee, Roberta Peters and Cesare Siepi, An Evening With Carol Burnett, The Victor Borge Show, Here's Edie, The Danny Kaye Show, As Caesar Sees It, Judy Garland and Her Guests and The Bob Hope Show.

Turning to musical items of a more classical nature Petitioners point to four concerts as well as four presentations of opera and ballet. These included Evening With Carlos Montoya, Piano Recital—Lateiner, a Joan Sutherland Concert, and Menotti's opera The Consul. Network attractions in this same vein included such examples as concerts with Leonard Bernstein and The New York Philharmonic, the St. Matthew Passion, Montemezzi's opera The Love of Three Kings, Menotti's opera The Labyrinth, Donizetti's Lucia Di Lammermoor and Triptych—The Nativity in Music and Dance.

Ability to present theater attractions has always been a major claim of subscription television proponents and eleven plays were presented to the Hartford subscribers during the trial period, including Hedda Gabler, and Androcles and the Lion. In the field of drama the networks presented among others, Celeste Holm in Cry Out in Silence, David Wayne in The Teahouse of the August Moon, Christopher Plummer in Cyrano de Bergerac, Ralph Bellamy in Impact of an Execution, Julie Harris in Pygmalion, Mary Martin and Cyril Ritchard in Peter Pan, Trevor Howard and Greer Garson in The Invincible Mr. Disraeli, Maurice Evans and Richard Burton in The Tempest, Charlton Heston in Sidney Kingsley's The Patriots, Jason Robards, Jr. in Robert Sherwood's Abe Lincoln in Illinois and Julie Harris and Dirk Bogarde in Little Moon of Alban.

The same kind of comparison can easily be made with respect to the 50 so-called "Educational and Instructional Programs" presented during the trial period in Hartford. While Hartford subscribers were paying for 50 programs in this category—but not in very large numbers, for all 50 educational features which were seen by a cumulative total of only 838 subscribers—the networks were presenting, in addition to their regular series offerings of news, documentaries, public affairs and cultural broadcasts, such special broadcasts as The River Nile; Winston Churchill—The Valiant Years; Shakespeare: Soul of An Age, with Michael Redgrave and Ralph Richardson; 109 Days to Venus, An Account of Mariner II's Probe of Venus; Parnassus '63, Readings from Shaw, Frost and MacLeish; The Death of Stalin, Study of Six Crucial Years in the Kremlin; The Great Challenge, Appraisals of Aspects of the American Democracy; Exhibitions: Twelve American Painters, Survey of Contemporary Artists at Work; The Kentucky Coal Miner, Story of a Distressed Industry; American Landmark: Lexington and Concord, narrated by Frederic March; 1492, A Decisive Year in the Saga of Western Man; Greece: The Golden Age; and innumerable others.

The offerings of commercial television in the areas enumerated have not diminished since the Hartford trial and indications are that the forthcoming 1966–67 season will set a new high water mark in special entertainment and cultural programming.

I may be superfluous as well as somewhat unfair to cite, in comparison with the limited offerings made to the Hartford subscribers, these examples of various special entertainment and cultural programs presented by the commercial networks during the same period. We cite such examples, however, only for the purpose of reminding the Commission that in this area as well Hartford fails to demonstrate that subscription television will offer program *types* not available on free television.

We turn now to the consideration of a development in American television which has emerged almost entirely since the Commission's First Report in this

Docket, which the Petitioners have paid no attention to in their Comments, and which represents a crucial part of the "new evidence" presented since the Hartford trial was authorized.

That new development is the emergence of a strong and creative educational television service in this country whose prime purpose is to do what subscription television claimed it could do best, the presentation of cultural and informaional programming of scope and quality.

It is an irony of circumstances that only three months after the subscription television experiment began in Hartford an experiment of a different nature was commenced there with the establishment of an educational television service. The Hartford ETV station (Channel 24) began on October 1, 1962 with 17½ hours per week of programming on a five-day per week basis.

During the trial period Channel 24's programing consisted almost exclusively of that furnished to it by National Educational Television (NET), but that programing by far eclipsed the cultural, educational and informational offerings made available on subscription television.

In the fall of 1962 alone NET's schedule included 62 hours of programing under the general heading "Festival of the Arts" (including 15 90-minute programs in the Shakespearean drama series, "An Age of Kings," and twelve two-hour programs in the NET Drama Festival series); 33 hours of programing under the general heading of "Fine Arts" (including a series each of master classes with Jascha Heifetz, Pablo Casals and Lotte Lehmann); 18 hours of programing under the general heading "The Light Show" (including programs on jazz and folk music) as well as children's programing and a wide assortment of informational programs in the physical and social sciences. During the remainder of the trial period NET's programing was, if anything, even more distinguished.

Interestingly enough, the comparative merits of subscription television and educational television in Hartford which we have been discussing were the subject of an informal public debate which took place at the close of the trial period. Writing in a local newspaper [9] in response to an editorial which had praised subscription television in Hartford the General Manager of Channel 24, Mr. Ben Hudelson, presented the issue in sharp relief:

"It is surprising that you characterize the service rendered by the subscription television station as 'a new and more effective use of television' since by and large, this service offered 114 hours of theatrical motion pictures while presenting only seven and one-half hours of any other kind of programing during the period June 6 through July 3.

"During this same period of time, Channel 24 was on the air slightly less (94½ hours vs. 121½) than the pay TV service of the other station and offered an infinite variety of programing—none of which was strictly instructional in nature since in-school programs were suspended for the summer as of May 29.

"Aside from movies, pay TV viewers were treated to three performances of a two hour special program featuring Carol Channing and one ninety minute show with The Limelighters.

"Channel 24 viewers were able to see concerts by four leading American symphony orchestras—Pittsburgh, San Francisco, Cleveland and National; four thirty minute programs featuring outstanding jazz personalities like Muggsy Spanier and John Coltrane; four thirty minute portraits of Sweden; four programs with well-known Connecticut journalists discussing important developments of the day; four delightful and informative sessions with Julia Child, the French Chef; a fine television performance of Shakespeare's 'A Midsummer Night's Dream'; programs on science, art, the dance, psychology, antiques, bridge and many more.

"And Channel 24 presented three movies, too; 'Moana,' 'Man of Aran' and 'Louisiana Story,' three of the most celebrated documentary motion pictures of all time, products of the 'father of the documentary,' the late Robert Flaherty.'

* * * * * * *

"In fact, it appears that much of the promise which was predicted for pay TV is now being delivered by Channel 24 and the other non-commercial educational stations across the country. This sentiment has been expressed by a number of Channel 24 viewers and is borne out by a comparative analysis of the two stations' schedules." (Emphasis added.)

Recent developments, of which the Commission is well aware, make it probable that the educational television service throughout the country will be

[9] *Farmington Valley Herald*, July 2, 1964.

better financed in the future than it has been in the past and will be able to enhance and strengthen its already excellent program offerings. Needless to say its service, like that proposed by subscription television, is free of commercial interruptions.[10]

We have dealt at some length with educational television only because we believe that it has in fact, during the almost nine years since the Commission's First Report on subscription television, provided that "beneficial supplement" to commercial television programming which, it was first thought, might be the contribution of subscription television. During that nine-year period the number of educational television stations has increased from 23 to well over 100, reaching a number of markets which exceed the number which could accommodate a subscription television service under Petitioners' "conservative" 10% penetration projections.

Entirely apart from any specific comparison between the cultural, educational and informational offerings of free television—both commercial and educational—and those of subscription television we would urge on the Commission the proposition that subscription television by its very nature is not suited to give "a wider choice to members of the public interested in the fine arts, operas, educational and informative material and other similar kinds of programs". (*First Report*, para. 48) Early in the debate over subscription television, in a 1956 statement before the Senate Committee on Interstate and Foreign Commerce, Richard S. Salant, Vice President of CBS, stated:

"But we doubt that pay television's promise of more educational and cultural programming will be kept. Nothing in the history of those mass entertainment media which are dependent for their revenues on direct payment by the public supports the likelihood of more culture and more education. One need only look at the history of Hollywood and its motion pictures. Exactly the same factor of the economic interest for mass audiences are operative in pay television, which will be dependent on obtaining the most dollars directly from the largest possible audience."

The Hartford trial bears out Mr. Salant's prediction concerning the reliance of subscription television on mass audiences. Over 90% of all Hartford offerings were theatrical features and sports events and these accounted for over 96% of all viewing. Hartford shows that a single Liston-Clay fight obtained almost four times as many viewing subscribers as the cumulative total of subscribers viewing all 50 so-called "educational features" broadcast during the trial period and that the six heavyweight championship fights obtained 89% of the cumulative number of subscribers who looked at all 35 "Specially Produced Entertainment Features."

Should it not now be abundantly clear, as Mr. Salant predicted in 1956, that subscription television is not a medium suited to provide a wider choice to members of the public interested in cultural, educational and informative material?

And—to the extent that subscription television is of only questionable viability—it will have to depend more, and not less, on mass appeal programs.

III. WHILE THE HARTFORD RESULTS ARE INCONCLUSIVE ON THE SIPHONING ISSUE, PETITIONERS' PROJECTIONS SHOW THAT NATIONWIDE SUBSCRIPTION TELEVISION WOULD BID AWAY SELECTIVE MASS APPEAL PROGRAMMING FROM FREE TELEVISION

As we have already shown, Hartford clearly demonstrates, and the Comments jointly filed by Petitioners confirm, that the program service to be offered by nationwide subscription television is duplicative of the program types now being offered the American public without charge. This fact alone should lead the Commission to conclude that the allocation of scarce spectrum space for this type of service would be against the public interest.

Authorization of nationwide subscription television, far from providing a "beneficial supplement to the program choices now available to the public" (*Notice*, para. 15), would—based on Petitioners' financial projections—seriously impair free television's capacity to present types of programming made available now and in the foreseeable future.

Such impairment would result from subscription television's reliance for product on the same program sources currently utilized by free television and its pro-

[10] Although subscription television would not be free of commercials advertising its own offerings. These, under Petitioners' Proposed Subscription Television Rules, are excluded from the definition of commercial advertising. Petitioners' Comments, p. 67.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Finally, we remind the Commission of the conclusions reached concerning proposals to authorize a subscription television service in the United Kingdom in the Report of the Committee on Broadcasting 1960—the so-called Pilkington Report, published in 1962:

"We do not doubt the intentions of those who propose to put on minority programmes. But the dynamic of profitability would compel the pursuit of the biggest audiences. We are unable to accept that a service financed by subscription would in the event either widen the range of programming, or complement the present services. We conclude that a service of subscription could provide a few items of programming which a service financed in any other way could not, but that it would not make good the deficiencies viewers find in the present services." (Paragraph 987)

"Subscription television is necessarily much the dearest way of providing a service. If the case for introducing it is to be made out its supporters have, therefore, to show that the service would bring marked increases in the range and quality of programming. They have also to show that these advantages would not be offset by a decrease in the range and quality of the existing services. In our view, it is highly unlikely that a service of subscription television would significantly increase the range and quality of programming. *If it were commercially successful, it would certainly and significantly reduce the value to viewers of the present services. Some viewers would, if the service did not have national coverage, be unable to make this reduction good by paying for the subscription service; others would not be able to afford to; the rest would pay where now they do not.* We concluded in Chapter XVIII that the next two national services to be provided should not be financed by subscription. We now recommend that no service of subscription television be authorized, whether by wire, or, if frequencies become available, by radio." (Paragraph 1001, emphasis added.)

IV. THE HARTFORD TRIAL ESTABLISHES THAT SUBSCRIPTION TELEVISION WOULD IN FACT DIVIDE THE AMERICAN TELEVISION AUDIENCE ALONG ECONOMIC LINES

Hartford indicates that subscription television must obtain rights to major sports events and motion picture features to get an audience. Much of this product would be siphoned away from free television. Opponents of subscription television, including CBS, have long argued that the authorization of a nationwide subscription television system would for the first time divide the American television public on an income basis. If Hartford establishes anything, it establishes the validity of CBS' position. It is significant that Petitioners' Table No. 2 (Petitioners' Comments, p. 21) indicates that only 1.5% of the Hartford subscribers had income levels of less than $4,000 while 29.1% of American families fell within such category. Petitioners dismiss 30% of the country's population in the following manner:

"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 classification may also represent that 8% of U.S. families who do not own television receivers." (Petitioners' Comments, p. 22)

At a time when this nation's domestic resources are being directed towards eliminating poverty and integrating those in the lowest economic strata of our population into the mainstream of American life, we submit that the public convenience, interest and necessity will not be advanced by using scarce spectrum space for a subscription television service that would for all practical purposes be unavailable to 30% of our population. This unfairness to a substantial element of our population is further compounded by the fact that major programming now seen on free television would be siphoned away by subscription television.

Petitioners talk of the impossibility of setting up fences to protect free television. The only fences being contemplated in this proceeding are those designed to keep out 30% of the public from an alleged "beneficial supplement" to the existing free service.

V. THE HARTFORD TRIAL DOES NOT SUPPORT THE VIEW THAT SUBSCRIBERS COULD BE OBTAINED IN SUFFICIENT NUMBERS TO MAKE SUBSCRIPTION TELEVISION A VIABLE BUSINESS

The Commission decided in its First Report that it was unable to make a determination that the authorization of subscription television would be in the public interest without the benefit of empirical data. In considering the economic viability of a nationwide subscription television system the Commission wrote in its First Report:

"An important factor—the degree of acceptance and support which the service might be able to obtain from members of the public in a position to make a free choice—could be reasonably tested in suitably limited trial demonstrations. We think it is neither necessary nor desirable that decisions upon which this factor and other important factors have an immediate bearing should be made on the unsatisfactory basis of speculation and conjecture which, with few exceptions, is the only ground available in support of the argument that even a limited trial would disserve the public." (Paragraph 54)

Petitions suggest in their Comments that Hartford now has furnished the Commission with sufficient empirical data on which to authorize a nationwide subscription television system.

However Petitioners arrive at their financial projections, we submit that they cannot be based on the results of the Hartford trial. Nor does the Commission view Hartford as establishing the economic viability of a nationwide subscripton television system. On this issue, the Commission's Notice states:

"Finally, although the Hartford trial, together with the experience of International Telemeter in Etobicoke and of Subscription Television, Inc., in California, has demonstrated that a subscriber market does exist where such service is offered, we cannot conclude from such a small sample that subscribers can be obtained in sufficient numbers to make this a viable business." (Paragraph 17)

We are in no position to determine how many subscribers RKO could have obtained in the Hartford tests if RKO had continued its efforts in that direction. RKO's decision to limit the number of Hartford subscribers to 5,000 resulted, according to Petitioners, from RKO's determination that "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." (Petitioner's Comments, p. 4) In approving RKO's application for testing in Hartford, the Commission took note in its findings of the fact that RKO (whose application proposals were endorsed by Petitioners) was prepared to invest on an unrecoverable basis up to ten million dollars in Hartord and was looking toward 10,000 subscribers by the end of the first year and a maximum of 50,000 during the trial. It is surpising that the considerations of "business prudence and fairness to the subscribers" which led RKO to limit their test operation in Hartford were not apparent to RKO and Petitioners at the time they submitted their application for testing wih the Commission.

If RKO and Petitioners intentionally limited their Hartford subscribers to 5,000 it would appear that they misled the Commission at the time of their original Hartford application. In any event, a decision to limit the subscribers to 5,000 had the effect of torpedoing the Commission's ability to obtain valid empirical data from Hartford. There is, of course, a further possibility—that the 5,000 subscriber "limit" was not a voluntary decision on RKO's part, but reflected its inability to sign up additional subscribers.[12] The Commission appears to recognize this possibility in paragraph 13 of the Further Notice: "While the fact that RKO decided not to increase the number of subscribers at the end of the second year of the trial could account in part for that low figure, there is a question whether if it had elected, instead, to continue to promote new subscriptions, it would have achieved a subscription penetration of much more than 1%."

The Commission's recognition of the inconclusiveness of the Hartford data bearing on the issue of the economic viability leads it now to suggest that this

[12] Or to keep them. We note that Petitioners, in explaining the high voluntary cancellation rate among Hartford subscribers, attributed it in their Comments to "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." However, in supplemental information filed with the Commission covering all three years of the trial Petitioners list the three principal reasons for subscriber cancellations as "Non-use", "Dissatisfaction with programming" and "economic reasons". Of a total of 3,478 voluntary cancellations during the entire trial period over 62% were due to these reasons.

issue can be resolved by requiring "a showing by the applicant of potential for sustained operation". (*Notice*, para. 17) While the "sustained operation" standard is now applied by the Commission to applicants for free television construction permits, the public, of course, is not there required to expend any money (other than in connection with television sets themselves) in reliance upon such "sustained operation". We assume it was the prospective inducement of additional consumer expenditures that led the Commission to request, in its First Report, data on the degree of acceptance and support by the public of a subscription service.

Petitioners state in their Comments that Hartford 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." (Petitioners' Comments, p. 25)

Hartford demonstrated for whatever reasons an inability on the part of a subscription television system to obtain more than 1% of the net weekly circulation of the market. Even conceding that this figure can be improved upon in a nationwide subscription television operation, we doubt that there is any empirical data to support Petitioners' projections of a 10% or even 20% market penetration for subscription television.

In sum we can see no grounds for the Commission to conclude that economic viability of subscription television has been established by its proponents.

VI. WHAT, IF ANY, ROLE SHOULD THE FEDERAL GOVERNMENT PLAY WITH REGARD TO SUBSCRIPTION TELEVISION BY WIRE OR CABLE, NOT USING THE BROADCAST SPECTRUM?

By its Notice of Inquiry the Commission for the first time has enlarged this proceeding to include an inquiry into subscription television transmitted by wire or cable.

We do not believe that the Commission has jurisdiction over wired subscription television. An exercise by the Commission of purported regulatory authority in this area would in our view go beyond any previous assertion of its authority. We argued in our comments in the CATV proceeding, Docket No. 15971 that:

"The form of regulation which the Commission attempts to adopt over CATV systems is not based upon a licensing structure. The Commission would apply a regulatory scheme to non-licensees under a statutory structure designed for licensees. This is unique in Commission regulation. The Commission has never asserted that its jurisdiction can reach the networks, or other program producers, directly, and without reference to their status as station licensees. The hearings that resulted in the passage of Section 508 of the Communications Act, and in the all-channel receiver legislation, furnish persuasive legislative history establishing that, absent specific statutory grant of authority over the persons affected, only Commission licensees are subject to regulatory authority—under reasonable standards set by the Commission and derived from the Act."

While the Commission ultimately did assert jurisdiction over community antenna television systems, its Jurisdictional Memorandum made clear that in so doing an all important element was the fact that television stations' signals were extended by CATV systems beyond the area or zone to be served by the originating station, a factor not involved here.

Even if we believed that the Commission does have jurisdiction to regulate wired subscription television, we would oppose such regulation. This is not because we think wired subscription television would represent a beneficial supplement to free television. On the contrary, we believe that many of the adverse effects resulting from the authorization of an over-the-air subscription television service could also be presented by wired subscription television.

Yet, the fact that wired subscription television does not involve the utilization of scarce spectrum space should convince the Commission that, given our pluralistic society, it best not regulate wired subscription television. For again, as we stated in our CATV comments:

"Over the years, CBS has emphasized the basic nature of American broadcasting as a system operating in the context of free competitive enterprise. In general, historically CBS has urged that, except for such areas as technical interference or direct impingement on the exercise of licensee responsibility, the Commission

should not, as a matter of public policy, intrude in the programming or the business and economic aspects of broadcasting.

"It is precisely because of this philosophy, for example, that CBS took the position, before the Congress, that no legislation should be enacted which would forbid *wired* pay television (as distinguished from *over-the-air* pay television, where the government must make a choice between uses of broadcast spectrum space). CBS took this position in recognition of the fact that wired pay television could, if successful, present a serious competitive challenge to the present system of broadcasting.

"The same philosophy compels CBS to refrain from supporting the proposed Rules. While it is possible that unrestricted and unregulated CATV may economically hurt the present system of broadcasting, CATV does not propose to use broadcasting spectrum space."

As indicated in the above-quoted Comments CBS has previously urged the Congress not to enact legislation which would forbid wired subscription television.

CONCLUSION

We submit that the Hartford subscription television trial does not furnish support for the conclusion that the nationwide auhorization of over-the-air subscription television would be in the public interest.

Because we strongly believe that Hartford, if anything, supports the contrary conclusion, we have not undertaken to comment on the restrictions which might be applied to subscription television were it authorized by the Commission or the rules under which it might operate.

Respectfully submitted.

COLUMBIA BROADCASTING SYSTEM, INC.,
LEON R. BROOKS,
RICHARD W. JENCKS,
ALBERT H. DWYER,
RALPH E. GOLDBERG,
Its Attorneys.

ASSOCIATION OF MAXIMUM SERVICE TELECASTERS, INC.,
Washington, D.C., October 20, 1967.

Hon. TORBERT HART MACDONALD,
U.S. House of Representatives,
Rayburn House Office Building, Washington, D.C.

DEAR CHAIRMAN MACDONALD: I appreciated the privilege of appearing before the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce on October 13, 1967. In my prepared statement I presented the position of MST in opposition to the establishment of a system of pay television by the FCC. Although copies of my prepared statement were made available to each of the members of the Subcommittee, it may be of interest to you to see my analysis of the FCC's proposed "two-year" sports rule, since this is a matter which was not covered in detail in my prepared statement.

It was quite evident during last week's hearings that there was considerable confusion as to what the FCC's Pay-TV Committee recommended regarding the availability of sports events now broadcast on free television for showing on pay-TV. Moreover, this confusion was compounded further by the testimony of Mr. Robert Hall, the "sports expert" for Skiatron Electronics and Television Corporation, when he appeared before the Subcommittee on October 16, 1967.

What has come to be called the "two-year rule" on sports events was intended by the Pay-TV Committee to prevent pay-TV from siphoning sports events now presented on free television. In my presentation to the Subcommittee I analyzed how the proposed FCC rule intended to accomplish the desired result of limiting siphoning, and whether the proposed FCC rule would be successful in achieving this result. I pointed out that, contrary to what appeared to be a common misconception, the proposed "two-year" limitation on siphoning amounted at the most to only a one-year limitation and in many instances was no limitation at all. In making this point I quoted from the relevant paragraphs of the Pay-TV Committee's Report. I cited specific language that was used by the Report in making clear that "regularly televised" by free television in the pay-TV community for two years preceding the proposed pay-TV broadcast meant free television broadcast in *each* of two consecutive years. Therefore, if the sports event were "regu-

larly televised" in one but not both of those two years preceding the proposed pay-TV showing, the event could be siphoned by pay-TV.

In addition, I made clear in my presentation that, wholly apart from the confusion over the length of time involved in the "two-year" rule, there could be siphoning of sports events from free television by pay-TV even if there were a true two-year limitation for the reasons set forth in the attached transcript of my remarks.

Since this is a matter of some importance, I am taking the liberty of supplying you with a copy of the official transcript of my remarks on the proposed sports rule for your files.

Sincerely,

LESTER W. LINDOW,
Executive Director.

SUPPLEMENTAL STATEMENT OF LESTER W. LINDOW, EXECUTIVE DIRECTOR, ASSOCIATION OF MAXIMUM SERVICE TELECASTERS, INC.

"There has been considerable discussion this week about the proposed FCC rules for pay TV as they would affect sports events. Quite understandably, there has been a certain amount of confusion. Let me say, first of all, that the proposed rules regarding sports are quite complex. It is certainly understandable that confusion has been created. I do not blame you one bit for having problems with these things.

"However, the proposed FCC Fourth Report and Order does set forth the proposed rules although, as I say, they are somewhat complicated. First of all, it is important to understand that there are two kinds of sports events established by the proposed rules. The first type is what are called specific sports events. These include such features as the World Series, the All Star Game, the various Bowl games, League Championships, and, of course, they extend not only to baseball but other kinds of sports, as well.

"The second type is what is described as non-specific sports events. Generally speaking, these include those games played as a part of a regular season, in other words, all the regular games of the Washington Redskins or the Washington Senators.

"Within the non-specific type there is a further breakdown of categories, again applying to all types of sports having a regular season. It includes home games, games away from home, pre-season games or exhibition games, or the so-called Games of the Week. These matters are set forth in detail on page 91, paragraph 261 of the proposed FCC Report as well as in paragraph 262 which immediately follows that.

"Let us refer back to the type described as specific sports events; the World Series, the All Star Game. The proposed Commission rules would provide that if such an event had been broadcast on free television for two consecutive years in the community, and I emphasize "in the community", where the pay television station is located, not nationwide but in the community, pay television cannot broadcast it. I refer now to page 92 of the proposed Report at paragraph 264.

"Let us take the World Series as an example. If the Series were on free TV in that community in October 1965 as well as in October 1966, both years, pay television could not show it in October 1967 on the pay TV station licensed to that community. Here I quote from the Report, 'If the Series were on free TV in that community in either October 1965 or 1966 but not in both years it would be viewed as not having been regularly televised there and an STV station could show the Series in October 1967.'

"This is the rule. Would it prevent siphoning? I don't think that it would. Let us see how this could conceivably work. It could work in several ways. Assume that the Series was broadcast on free television in 1966 and again this year, in 1967. The pay television station operator in Washington, D.C. could go to the baseball people, offer them a sufficient amount of money if they would refuse to sell the World Series rights for Washington for free television in 1968—they only have to do it in Washington—and agree to make up the difference in income. The following year it could be placed on pay TV and every year thereafter.

"Another method to get around this might well be to keep it off free television in 1968, but, through mutually agreeable arrangements, put the Series in 1968 into theater pay television in Washington, in near-by Maryland, Virginia, all through our whole area, with the idea of bringing it on pay TV the following year. Under this method, the baseball people would not stand to lose any revenue

and the public could see the Series provided they were able to go to the theater and pay for it for one year.

"Now, we do not say that this would necessarily happen on a national basis overnight but it could happen on a selected basis in Market A and B this year, in C and D next year, and, incidentally, Zenith said that they did not expect to go into operation all over the country; they are just talking about a couple of markets at a time; Mr. Wright made that point the other day—they could do this progressively and so on until in a relatively short time, for all practical purposes, the World Series would be taken out of the realm of free television and into a completely pay TV setup.

"Certainly there would be outcries from the public. There were outcries from the public when Championship fights were put into the theaters on a pay basis and taken off free television. You have reminded us on several occasions, again this week, that there were very serious outcries from Arizona this spring on this very matter, in the case of the Clay-Foley Championship fight. But the situation still exists. That is part of what we are up here talking about today.

"Now let us turn to the second type of sports event set up by the proposed Commission rules, that of the non-specific sports event; the game which is played as a part of a regular season. The proposed Commission rules cover this as well. I refer you now to paragraphs 266 and 267, commencing at the bottom of page 92 of the proposed FCC Report.

"If a substantial number of non-specific events, such as home games or away from home games, or the so-called Games of the Week, were televised over free television in the pay TV community and were, and I quote from the proposed FCC Report, 'within each of the two years preceding the proposed STV broadcasting thereof', then no games in that category may be presented by pay television in that community.

"As the proposed FCC Report states, the standard is to be applied on a category by category basis, and, here I quote again from the Report, 'If during one but not both of the two years preceding proposed STV broadcast, a substantial number of events in a category were not televised in a community, the category will be considered not to have been regularly televised therein and STV may show the contests in that category.' That means all such contests.

"Now, that is the rule that is proposed. Does it prevent siphoning? A pay TV promoter could use his economic leverage to purchase the games in a category of non-specific sport events such as regular season home baseball games, which may not have been broadcast in the community over free television, and present them without any delay. For example, assume that a baseball team plays 80 home games and no games in this category are broadcast on free television in the home community. Pay TV could purchase the television rights to all of the home games in this category the very next season, while the away from home games previously broadcast by television could be withdrawn from free television by the ball club during that season so that they, too, could be made available to pay TV the following year. The same situation could exist if some but not all of the home games were broadcast on free television.

"Now, I hope this may help clear up the so-called two-year provision which I think is a snare and a delusion."

WASHINGTON, D.C., *October 9, 1967.*

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND POWER,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Rayburn House Office Building, Washington, D.C.:

The attached "Comments of International Telemeter Corporation" were filed with the Federal Communications Commission in Docket No. 11279, on October 10, 1966, in the Commission's rule-making proceeding looking toward the adoption of Rules and Regulations to provide for subscription television service.

It is respectfully requested that the attached Comments be incorporated in the record of the Hearings on Subscription Television to be conducted before the House Subcommittee on Communications and Power. These comments set forth in some detail the position of International Telemeter Corporation with respect to the various issues pending before the Federal Communications Commission in the subscription television rule-making proceeding.

Respectfully submitted,

ARNOLD & PORTER,
Counsel for International Telemeter Corp.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

IN THE MATTER OF:

AMENDMENT OF PART 73 OF THE COMMISSION'S RULES AND REGULATIONS (RADIO BROADCAST SERVICES) TO PROVIDE FOR SUBSCRIPTION TELEVISION SERVICES

Docket No. 11279

COMMENTS OF INTERNATIONAL TELEMETER CORPORATION

October 10, 1966

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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

In the Matter of Amendment of Part 73 of the Commission's Rules and Regulations (Radio Broadcast Services) to provide for Subscription Television Services For Action by the Commission	Docket No. 11279

COMMENTS OF INTERNATIONAL TELEMETER CORPORATION

International Telemeter Corporation (hereinafter Telemeter), by its attorneys, respectfully submits the following comments in response to the Commission's Further Notice of Proposed Rule Making and Notice of Inquiry in Docket No. 11279, released March 24, 1966.

I. SUMMARY OF TELEMETER'S CONCLUSIONS

1. Telemeter's principal conclusions, as developed herein, are as follows:

A. Telemeter Has Developed the Equipment and Has the Experience To Implement a Successful Subscription Television Service.

2. On the basis of sixteen years of development and five years of experimental operation, International Telemeter Corporation has developed a subscription television system permitting maximum operating flexibility. The system may be operated on a cash or credit basis, over-the-air or via coaxial cables, and in color or black and white. It is low in cost and compatible with television stereophonic sound. The Telemeter broadcast decoder functions as a UHF converter on free programs. It converts VHF only receivers to all-channel receivers.

B. Subscription Television Service Offers the Only Path to Improved Television Programming.

3. Today, those who watch trends in television programming are expressing alarm that the "wasteland" will become even more arid because of the accelerating depletion of feature motion pictures available for television showing. Subscription television, on the contrary, because of its vastly superior economic base, will be able to supply fresh, new programming of top quality to its viewers. The transmission of "Show Girl" from Broadway, and of "blacked-out" championship sports events on Telemeter's experimental system, has demonstrated this capability.

C. Subscription Television Will Not "Syphon" Programming Fare From Existing Television Services but Will Present "Box Office" Entertainment Not Now Regularly Available to Television Viewers.

4. Subscription television will be able to furnish current motion pictures, blacked-out sports events, and cultural programs which cannot be presented on commercial television because of economic factors. In addition, subscription television will bring current Broadway plays and similar entertainment into viewers' homes at a fraction of the cost involved in box office ticket purchases. By broadening the base of support of the legitimate theatre and other cultural attractions, subscription television will give an impetus to the growth and improvement of these media at the same time that it makes their productions available to more people at lower prices.

D. There Should Be No Unnecessary Limitations Imposed Now Upon the Ability of Subscription Television Concerns To Do Everything Required To Institute Successful Operations.

5. The financial investment required to enter the subscription television industry is significantly large. Furthermore, a subscription television operation is a complex business, involving the production and distribution of entertainment, transmission, reception and billing facilities, as well as related components. If any aspect of this complex operation is deficient—for example, if programs are not available when they are needed—the operation will not succeed and the investment will be lost. Therefore, at the outset, the subscription television concern should be allowed complete control of the various ingredients necessary to its success. This means in practice that there should be no limitation on the ability of broadcasters to be subscription television franchise holders, to engage in programming activities, to own and maintain subscription television devices in homes and to engage in other activities essential to success.

E. Closed-Circuit Subscription Television Takes No Spectrum Space From Other Uses. The Commission Does Not Have Jurisdiction Over Closed-Circuit Subscription Television and the Public Interest Requires That It Be Permitted To Grow, Irrespective of the Role of CATV.

6. Experience in existing subscription television systems shows that only about five percent of public viewing time goes to the medium. In view of this figure, the arguments urging the regulation, or prohibition, of closed-circuit subscription television border on the ludicrous. Its viewers spend such a small percentage of their viewing time watching subscription television that it is not truly competitive with existing commercial television—it is a new entertainment medium. Closed-circuit subscription television results in no diminution of existing or potential services because it does not use the air-waves. Obviously, the same remarks are applicable to closed-circuit subscription television in conjunction with community antenna television. Here the opponents of subscription television have used the argument that such closed-circuit operations ought to be prohibited because, with CATV operations sharing the expense, the ultimate cost to the public will be lower. It is a strange doctrine that something which costs the public less should, for that reason, be made illegal.

F. Recommendation.

7. Telemeter recommends that subscription television be instituted as a regular service without delay and that, to the extent that it is consistent with the public interest, there be no limitations on the ability of subscription television operating companies to do everything necessary to develop successful operations, all to the end of providing a new, vital and viable service to the public.

II. TELEMETER'S PREVIOUS SUBMISSIONS

8. This proceeding was commenced in 1955, over eleven years ago, by the issuance of a Notice of Proposed Rule Making inviting comments as to whether the public interest would be served by the adoption of rules authorizing and governing subscription television operations. Under date of June 9, 1955, Telemeter submitted extensive comments directed to the various aspects of the proposed rules originally under consideration. On May 25, 1965, Telemeter submitted additional comments in support of the Joint Petition of Zenith Radio Corporation and Teco, Inc., which urged the prompt authorization of subscription television service. On June 17, 1966, Telemeter filed with the Commission a technical description of its system.

9. Over the eleven-year period since the filing of Telemeter's original comments, numerous changes and improvements have evolved, both in the technical system offered by Telemeter, and in the business and economic patterns in which subscription television may be expected to operate. The comments to follow may thus be at variance in some particulars with those filed in 1955. Telemeter requests the Commission to take notice of the matters and facts set forth in its earlier comments and filings, much of which remains valid. To the extent, however, that the earlier comments vary from those now filed, the latter should, of course, prevail.

10. The background of Telemeter in the pay television field has been amply documented in the submissions cited above and need not be here detailed. Briefly, however, Telemeter has been engaged in research and development in the subscription television field for seventeen years, has had five years of extensive field experience in commercial operation of its closed-circuit subscription television system and has had five years of experimental operation of its broadcast system. As will be evident from the following comments, Telemeter, as a result of its research and development, and of its operating experience, has arrived at several basic changes in its approach to the institution of widespread subscription television operations.

III. DESCRIPTION OF TELEMETER'S SYSTEM

11. The technical submission of June 17, 1966, contains a detailed description of the Telemeter system operation. For convenience, however, a brief summary is included here.

A. The "Cash or Credit" Decoder.

12. Although Telemeter originally proposed a cash system only, one of the results of Telemeter's five-year field test in a Toronto, Canada, suburb (Etobicoke) was the decision to develop a combined cash and credit subscription television system. As part of the Toronto operation, the company conducted a credit experiment in which a number of customers, some of whom had previously had cash units, were equipped with credit, or billing, units. On the basis of comparisons of gross income, customer reaction, preference and convenience, and other considerations, Telemeter ascertained that there is a sufficient requirement on the part of certain segments of the public for a credit unit to warrant development of a compatible cash and credit system.

13. This cash and credit system is capable of operating both on cable and over-the-air. *The system is compatible in the sense that both cash and credit units operate using the same transmissions.* The price demand and control mechanism in the cash unit are controlled by the same set of pulses and tones that control the billing mechanism in the credit unit. Thus, the system provides maximum convenience and flexibility for the public, as well as the subscription television operator.

14. The heart of the Telemeter system is the Telemeter decoder—either the cash or credit version—which is placed in the subscriber's home. The decoder is connected between the lead wires from the subscriber's antenna and the antenna terminals on the back of his television set. No modifications are required in the set in order to install the decoder, regardless of make, model, year, or other factors. After the decoder is installed, the set continues to be usable for the reception of non-subscription programming. If the subscriber wishes to discontinue the service, removal of the decoder involves merely the reconnection of the antenna lead to the antenna terminals of the subscriber's receiver. The receiver is totally unchanged in the process. In the course of installing, repairing, removing, or otherwise performing operations connected with the Telemeter decoder, the back of the subscriber's receiver is never removed.

15. In the Telemeter broadcast system all television viewers, regardless of whether they have decoders, are provided with a message in the normal television sound channel giving them information about subscription programs when they turn to a subscription television channel. Included in the message is information about the identity of the program, its price, and for the benefit of subscribers only, its code number. At the same time, all viewers see a scrambled picture on the screens of their television receivers.

16. A *credit subscriber* who wishes, on the basis of the information he has heard, to purchase a program, need merely "dial" the code number into his unit by moving four levers so that the four numbers of a code appear in a window on the unit. Following this, he pushes a purchase button to receive the program. Instead of pushing the purchase button, the *cash subscriber* deposits cash in a mechanism in order to purchase a program.

17. In either case, a printed record is made automatically within the decoder, consisting of the identity number and price of the program which has just been purchased. One copy of this record is delivered

to the credit customer by the unit monthly, and another copy is retained within the decoder. The credit subscriber's unit is furnished with a key so that it is possible for him to lock it against unauthorized use.

18. All Telemeter decoders contain a special code card. The subscriber must remove this code card monthly, and substitute a new one for it. Unless the correct code card is in place, the Telemeter decoder will not unscramble subscription television programs. Since the Telemeter operator is able to withhold mailing code cards to delinquent subscribers, the card gives the operator a mechanism for controlling the utilization of decoders.

19. In the case of cash subscribers, of course, a collector visits the home periodically to remove a cash drawer within the decoder, and substitutes a new one for it.

B. VHF-UHF Capability.

20. The Telemeter decoder is fully transistorized and contains both all-channel VHF and UHF tuners. *If a subscriber's television set does not have a UHF tuner, the Telemeter decoder on free programs serves as a UHF converter.* In operation, the subscriber's television set is tuned to an output channel. This may be either channel 2 or channel 3. There is no need for further tuning of the television set. In watching subscription television programs, the subscriber uses the VHF and UHF tuners on his decoder.

C. Video Scrambling.

21. The Telemeter system of scrambling and unscrambling the picture is unique in that the picture signals themselves are never subjected to distortions. Instead, the synchronizing signals which control the operation of the scanning circuits in the subscriber's set are sent in a manner different from normal television, so that the picture is scrambled because normal receiving sets cannot use these new synchronizing signals. As another result, the Telemeter decoder functions equally well on monochrome and color transmissions.

D. Sound Fidelity.

22. It is inherent in the Telemeter sound system that the frequency range and freedom from noise of normal television are retained. The Telemeter sound system is fully compatible with television stereophonic sound transmissions, currently under consideration by the Commission.

E. Transmission Characteristics.

23. Finally, from the point of view of the television broadcaster, switching from normal to subscription operation and vice-versa, is extremely simple. All of the Telemeter encoding and special transmission equipment is contained in a package and can be easily connected to the existing transmission equipment. Switch-over can be accomplished remotely under the control of a master switching unit.

IV. BACKGROUND CONSIDERATIONS

24. Since the inception of the idea of subscription television, and particularly since the institution of this rule-making proceeding eleven years ago, those who oppose subscription television have been active and vociferous in their denouncement of the concept. It is therefore as important to point out and underscore what subscription television is *not* as it is to describe what it is.

A. The "Free" Programming Contentions.

25. Telemeter predicted in 1955 that conventional television programming was headed for the type of "vast wasteland" in which it now resides. With the rising costs of television production, necessitating multiple sponsors among the nation's largest industries to support even average programs, and with the constant depletion of feature motion pictures available to television, conventional television progamming has reached a level of mediocrity that constitutes a near abuse of the potential which the medium could achieve.

26. Subscription television in contrast, because of its highly superior economic base,[1] promises to irrigate the vast wasteland with box-office type attractions not now available via conventional television.

27. For example, during Telemeter's Toronto experiment, which continued for a period of five years, Telemeter brought to the subscribing public not what it already received "free," but rather top quality, box-office attractions, such as current feature motion picture films, not available on conventional television; a live transmission from the stage of the Eugene O'Neill Theatre in New York of a performance of "Show Girl," starring Carol Channing; taped per-

1 Telemeter's original comments in 1955 contain a detailed economic analysis of the potential of subscription television as compared with sponsored television. As is there described, the broader economic base provided by subscription television will enable it to bring to the public programs vastly superior to and beyond the economic reach of sponsored television.

formances of Broadway and off-Broadway productions; especially produced drama for Telemeter viewers; the re-creation of the night-club performance of the McGuire Sisters; a specially produced presentation by Gracie Fields and Stanley Holloway; the away-from-home games of the Toronto Maple Leafs Hockey Club, never before available locally on television; the otherwise "blacked-out" home games of the Toronto Argonauts professional football club; "blacked-out" championship boxing matches; and other attractions not available to the public on conventional television. It must be noted that the "blacked-out" Clay-Patterson Championship Fight last year, available to Telemeter's subscribers in Toronto, was brought into the home via the same closed-circuit facilities that carried the major boxing event to theatres throughout the United States and Canada, but at a fraction of the cost, per viewer. Theatres charged from five to seven dollars per person—Telemeter subscribers paid two dollars for the entire household.

28. When Telemeter terminated the Toronto experiment in April 1965, a large percentage of the subscribers responded to a questionnaire, with 96.9 percent of the respondents expressing regret at the discontinuance of the service.

29. In its five years of uninterrupted service, Telemeter established, beyond question, that there is a large audience willing to pay for superior entertainment in the home on a continuing basis. It thus demonstrated that the Telemeter "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.

30. Opponents of subscription television, while recognizing the superior quality of the special programming presented by Telemeter on its experimental system in Toronto, have complained about the paucity of such presentations. It is true that in the 1961-62 season there were only seven special shows, apart, of course, from sports-events and hundreds of current motion pictures—but the specials had to be produced at substantial financial losses because the audience was limited to the number of subscribers in a small experiment. As the size of the subscription television audience grows, obviously the number and quality of special programs will grow. Telemeter recognizes that only with such programming can subscription television be successful for Telemeter has never assumed, nor does it believe, that the American public will be willing to pay directly for the type of entertainment which it now pays for indirectly on advertiser-sponsored television.

31. To the contrary, if subscription television is to be successful, it will be because the vastly larger economic base provided thereby will enable its owners to bring to the public unusual and superior attractions which can never be provided by advertiser-sponsored television because of their prohibitive costs. Sponsored television—even with the giants of industry as its clients—cannot afford, *on a regular basis,* to bring current feature pictures to the viewer. Sponsored television cannot afford regularly to purchase the rights to otherwise blacked-out major sporting events. Sponsored television cannot afford, on a regular basis, to bring many of the outstanding events to the viewing public which subscription television can do with comparative economic ease.

32. Yet, those who are entrenched in other entertainment media with whom subscription television would to some extent compete, including the networks and many broadcasters, persist in the vocal but invalid contention that subscription television will require the public to pay for what it now receives "free";[1] that existing television programming will be "syphoned off" to subscription television; and that motion picture theatres will close and dire monopolistic consequences will follow. Telemeter's answer to these contentions is the same as it was in 1955. All that subscription television seeks is a chance to compete openly in the market place. If subscription television offers to the public, at a price, no more than it now receives "free," it will fail. Telemeter seeks only a chance to succeed or fail. It believes that it will succeed and that the viewing public will be the benefactor of its success.

B. The "Monopoly Strawman."

33. Like the reports of Mark Twain's death, the fears of monopoly in subscription television are "greatly exaggerated." Subscription television, as an industry, does not yet exist. Indeed, there is but one subscription television system in operation in the United States today —and the subscribers to this system represent a small minority in their community. This small minority spends less than five percent of its total viewing time watching subscription television programs. Is this the monster which is to steal talent, close theatres, and destroy "free" television? Telemeter believes that the Commission has recognized it is not as is evidenced by its findings in paragraphs

[1] As Telemeter's 1955 Comments discuss in great detail, existing television programming is not "free." The public pays for it through consumer purchases of advertised products. The amount expended for advertising is reflected in the purchase price of the product.

10-17 of its Further Notice of Proposed Rule Making to which these comments are addressed.

34. The fact is that subscription television is not even an infant industry. Its opponents have attempted, by raising false issues, to stifle it before it can be born. Any regulations which the Commission makes at this time should recognize the essential truth of this statement.

35. The elements of a subscription television industry have not yet emerged in any clear-cut form. There are no subscription television programming companies, syndicators, maintenance companies or other needed components. The elements of the existing structure which constitutes commercial broadcasting, or which constitutes the motion picture production, distribution and exhibition industry, do not yet exist. The Commission must therefore proceed with caution in adopting rules to regulate an industry whose essential character has not yet begun to emerge, lest its natural and successful growth be unduly restricted and inhibited.

36. The subscription television business, regardless of the form which it will ultimately assume, will have at its core today the subscription television entrepreneur. He is the man, or the corporation, which must bring all of the elements required for successful subscription television into existence. At some time in the future, after the business has been started, there will be producers, maintenance firms, syndicators, broadcasters and others, but these elements do not exist today. It serves no useful purpose, therefore, to talk about separating the components and establishing regulations to govern their relationships. If a single firm is not allowed to start a total subscription television business including everything from the production of entertainment through its broadcasting, through its sale to the public, through installation of decoders, and through the collection of money, and every other aspect of the enterprise, subscription television is unlikely to come into existence.

37. Subscription television, in its present stature, is analogous to the motion picture industry in its beginnings. A motion picture theatre, like any other theatre, is an enclosure containing means for exhibiting entertainment for which the patron must pay. The enclosure of a theatre may be analogized to the scrambling and unscrambling means of the broadcast subscription television system, and the box office to its credit or cash charging system. The projection equipment constitutes a means of communicating the entertainment

on film to the public, and is analogous to the transmitting equipment of a broadcast. The theatre owner picks his programs and determines the timing and duration of their exhibition and their pricing, incidentally, on the basis of his knowledge of his market.

38. In the early days of motion pictures, exhibitors would not go to the expense of building theatres because there was no entertainment available to be shown in them. Therefore, in order to get the industry under way, a natural identity developed between producers, distributors, and exhibitors. This identity was an absolute necessity if the industry was to come into existence.

39. At this stage in the development of subscription television, no company (which is truly independent) is going to invest in decoders if it does not control broadcast facilities, and if it is not able to assure itself that it will be able to make its own efforts to obtain programming by every means physically available. The infant motion picture industry had a programming problem which was actually simpler than the infant subscription television industry. The problem of the motion picture industry was that entertainment was not available. The problem of the infant subscription television industry is that even where entertainment is available, it has been withheld, so that it is naive to assume that a subscription television operator, at this stage, can sit in his office and expect purveyors of entertainment of top quality to come to him.

40. Furthermore, in view of the obvious and manifest hostility of existing media toward subscription television, it is equally naive to suppose that commercial broadcasters in significant numbers will approach a detached subscription television operator—without his own broadcast facilities—for the privilege of showing an occasional subscription television program. *If subscription television is to develop, it is Telemeter's considered judgment that it will have to be started by those in full control of every aspect of the subscription television business with no, or exceedingly few, limitations upon their ability to solve the multifarious problems which experience has shown they cannot avoid.*

41. It is within this framework that we shall comment upon the specific questions raised by the Commission in its Notice.

V. COMMERCIAL ORGANIZATION OF THE TELEMETER SYSTEM

42. Telemeter proposes that, during the initial stages of the development of subscription television, it will grant exclusive franchises for use of the Telemeter system in various television markets. These franchised operators will be broadcasters or affiliated with broadcasting so that they may have access to, and control over, broadcasting facilities. They will have the right to sub-franchise others, and to allow other broadcasters to use their facilities, but initially, Telemeter believes that these matters must be in the franchisees' sole control.

43. Only under these circumstances will such franchisees invest capital in home decoders, encoding equipment, programming guarantees, and all other facets required for the successful introduction of subscription television in each market. This pattern of proposed operations is already reflected in franchise agreements which have been signed for Telemeter's broadcast system, although these agreements, of course, are effectively subject to Commission action. This arrangement is, in fact, the one which has already existed in Hartford, and in Toronto. It is dictated by the total situation existing at this time.

44. On the other hand, Telemeter does not believe that the Commission should require subscription television operations to be by exclusive franchise. On the contrary, until the service has had a reasonable chance to develop, it is neither possible nor practical to attempt to mold the relationship of system proponent and franchisee into a fixed pattern. Time, experience or conditions in a particular market may indicate that a nonexclusive franchise is desirable. Moreover, while it now appears unrealistic to think of franchising anyone but a broadcaster, time and experience may indicate that the franchising of broadcasters may be too restrictive and that other entrepreneurs may be in a better position to initiate and develop subscription operations, either through appropriate arrangements with broadcasters or, in some cases, by the restricted use of channels not otherwise employed in broadcasting. For these reasons, Telemeter urges that no rules be adopted that would abridge or restrict the complete freedom of the system owner to grant exclusive or nonexclusive franchises either to broadcasters or non-broadcasters.

VI. COMMENTS ON SPECIFIC QUESTIONS RAISED BY THE NOTICE

(1) Should Subscription Television Be Limited to Communities Receiving a Minimum Number of Television Signals . . . or Whether It Should Not Be So Limited but Should, in Communities Not Lying Within Four Commercial Grade A Contours Be Restricted to a More Limited Scope, Especially as to Hours of Operation, Than in Four-Service Communities?

45. Telemeter urges the Commission not to limit subscription television to communities receiving a minimum or specified number of Grade A signals. If it is to have a reasonable chance to succeed, subscription television must not be hamstrung by artificial and arbitrary restrictions. Telemeter believes that the new service has a tremendous potential which may find expression and usefulness under varying circumstances in different sized and types of communities. Indeed, as Zenith pointed out in its March 10, 1965, petition, subscription television has the potential of "generating the construction of new stations" and this could develop in small, underserved markets as well as in the larger markets. Subscription television could well provide the economic sustenance to support a station which might otherwise not be built in a marginal community.

46. On the other hand, in communities where three network stations and possibly strong non-network affiliated stations flourish, subscription television could well provide the necessary economic basis needed to develop a viable UHF competitor. Particularly is this so in the case of Telemeter's system, where its decoder unit acts as a UHF converter as well as subscription decoder, thus enabling every VHF-only set to receive UHF signals. In short, the nature of the community in which subscription television is permitted should not be controlled by rule but should, at most, be determined on an *ad hoc* basis in light of all of the factors involved in each particular situation.

(2) (a) Should Stations Engaged in Subscription Television Broadcasting Be Required To Broadcast a Minimum Number of Hours of Conventional Television Daily? If So, How Many Hours?

(b) Should Subscription Television Be Restricted to Certain Segments of the Broadcast Day and, if So, What Segments?

(c) Should a Maximum or Minimum Number of Hours of Subscription Television Per Day or Week Be Specified?

47. Telemeter agrees with the Commission's proposed rule (Section 73.643[c]), providing that 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 present Rules. The experience of Zenith in Hartford and Telemeter in Toronto would indicate that this can be done and still provide adequate time for subscription programs. In its franchise agreements, Telemeter has provided that a minimum of thirty hours of subscription television be broadcast per week. Since the public has already shown in the experimental operations a tendency to restrict its subscription television viewing to prime time, it would appear that to achieve maximum service to the public the minimum of thirty hours per week of subscription television broadcasting should take place in prime time with appropriate allowance made for weekend events.

48. The time limitations proposed by the Commission in Section 73.643[d] do not appear to be unrealistic in light of the experience gained in experimental operations to date. Telemeter believes, however, that too many variations exist as among markets of differing sizes and nature, *e.g.*, crowded spectrum space in comparatively affluent eastern markets as opposed to ample channel availability in small, less affluent western markets, to permit the easy application of an hour's limitation as proposed. For this reason, Telemeter again urges that no rules be adopted limiting the hours which stations in particular markets may devote to subscription television. It is believed that free competition as between subscription and conventional programming as well as the limits upon the pocketbooks of the viewing public will provide the hourly limitations most desired by the public. This would be true whether one or more subscription operations are permitted in a given community.

(3) Should Subscription Television Be Permitted Over Any Television Station (Subject to Possible Qualification Concerning the Number of Stations in the Market), UHF Stations Only, or Should Some Other Limitation Be Imposed?

49. Subscription television should be permitted over any qualified station, whether VHF or UHF. Here again, it seems likely that the dictates of competition in the particular market will answer the question which the Commission poses. In cities with three or more VHF stations, it is likely that subscription operations will be espoused only by the independents, be they VHF or UHF. And the communities in which VHF independents might use subscription service would be minimal since only a few of the cities in the top one hundred markets have more than three VHF channels allocated. Thus, it is probable that the numerous UHF stations and allocations in the top

one hundred markets will provide the likely outlets for subscription television. There would appear to be no sound reason, however, for foreclosing subscription operations by VHF facilities in the limited number of markets where such usage might be made.

(4) Should More Than One Station Be Permitted To Engage in Subscription Television in Any Market and, if So, Should These Stations Be Permitted To Transmit Subscription Television Simultaneously?

50. Subscription television will not necessarily mean less "free" television. As we have indicated, subscription television has the potential for creating new television stations and causing marginal ones to become viable. Moreover, it will encourage and support UHF growth and development. Competition as between subscription stations in a given market should result in improved program service for the public not only from the subscription television stations but from the conventional stations as well. Both Telemeter and Zenith have pointed out the importance of encouraging competition in the subscription television field. But the decision as to whether to allow multiple station subscription television operations in a given market is a complex one, and should be decided on a case-by-case basis—at least until some pattern emerges.

51. On the other hand, closed-circuit subscription television systems do not use up allocations, and are clearly an additive service, so there is no reason for restricting them in any event.

(5) Should More Than One Subscription Television Technical System Be Authorized and, if So, Should More Than One Technical System Be Authorized To Operate in Any One Community?

52. Telemeter believes that it is premature to authorize one system. If this were a purely technical question, the answer might be simple. However, the question of whether to allow one technical system at this time goes to the heart of the commercial organization of subscription television. The advantage which has been given for fixing on one technical system is that the public would be required to have only one decoder in each home. But who is to control this decoder? If it is to be a broadcaster, how is he to be compelled to encourage the competitive programming of another broadcaster? If it is not to be a broadcaster, how are we to expect a businessman to invest in tens of thousands of decoders without any guarantee that anyone will program for them or broadcast to them?

53. As we have attempted to point out in earlier portions of these comments, Telemeter believes that broadcasters, decoder owners and

maintainers, and programmers will have to be one and the same in the initial stages of this industry. Moreover, it is probable, at the outset, that exclusive franchise arrangements will be necessary to induce investment by the subscription television pioneer. Under these circumstances, the only way for there to be competition is for the government to authorize as many systems as meet general standards of good practice. Dual standards in other fields have been successful. Indeed, in the automotive field, Buick, Oldsmobile and Pontiac, all made by General Motors, compete with one another while, in the detergent field, soap manufacturers successfully market commonly-owned competing products.

54. Furthermore, from the point of view of the development of the subscription television technology, the effect of picking one standard at this time will be to stifle invention and eliminate competition.[1] There is much room for improvement in the "hardware" of subscription television as well as in system methods. If a single standard is adopted, the incentive for further improvement will be lessened. If more than one technical system is permitted, inventive ingenuity, in the American tradition, will "build a better mouse trap" under free competition—all to the benefit of the consumer and the viewing public. Finally, because the adoption of a single standard would eliminate competition, it would prematurely necessitate a plethora of rate regulations, patent license regulations, and similar burdens all of which would tend to stifle an as yet non-existent industry.

(6) Should a Party Manufacturing or Selling Equipment, or a Holder of a Subscription Television Franchise in More Than One Market, Be Permitted To Engage in the Procurement and Supply of Programs to Television Stations for Subscription Use?

55. As we have indicated above, if the subscription television operator cannot engage in programming activities himself, the chances for initial success of subscription television will be seriously reduced. Those in the normal channels of distribution of entertainment have obvious motives for not dealing with the subscription television entrepreneur as the experience in Hartford has clearly shown (where the threat of lawsuits was required to obtain certain programming). The subscription television operator should, therefore, be free to develop and procure programming from whatever source available. But Telemeter agrees with the Commission in its proposed rule that,

[1] The Zenith equipment of four years ago and the Telemeter equipment of five years ago have been improved. It is only logical to expect that further technological improvements will occur in succeeding years.

within this broad frame of reference, no restrictive agreements in this field be permitted.

56. On the other hand, Telemeter emphatically disagrees with the petitioner who would preclude exclusive franchise agreements between Telemeter and television station licensees. As we have indicated previously, an exclusive franchise may well be the only vehicle for instituting service in the early days of the subscription television industry. Moreover, at least in the formative stages of the industry, the subscription franchisee will need help and assistance in program procurement. The individual franchisee in many, if not most, cases will not have adequate financial or bargaining strength to obtain the type of box-office attractions so necessary for the success of a subscription operation. It may well be that the help of Telemeter will be required to obtain such programming fare as major sporting events or Broadway shows. The experiments to date prove that a subscription system is not an easy business to start. For these reasons Telemeter urges that, at the outset at least, there should be no limitations placed upon the system proponent, such a Telemeter, or upon the franchises in terms of their ability to produce, acquire, obtain or supply subscription television programming.

(7) What Requirements Should Be Imposed Upon Subscription Licensees To Assure Licensee Control?

57. Telemeter urges that the rules designed to assure licensee control over subscription programming be no more restrictive than necessary to assure that the licensee retains the power to reject programs which it deems unsuitable and to substitute other programs, whether subscription or conventional, which it deems of greater public interest. Telemeter believes that the rules proposed by the Commission in Section 73.642(e) of Appendix C to the Notice would assure adequate licensee control. It would support the proposed rules provided it is made clear that they do not preclude exclusive franchise arrangements and do not impair the contractual arrangements thereunder whereby the franchisee undertakes to broadcast a minimum of subscription programs within specified time segments.

(8) The Nature of the Technical Rules That Should Be Adopted.

58. As previously asserted, Telemeter urges that subscription service not be limited to a single technical system. In its technical comments, filed June 17, 1966, Telemeter set forth in detail the technical nature of its system. Zenith and other system proponents have done likewise. Telemeter does not believe that it should undertake

to draft technical rules designed to accommodate the multiple standards and devices embodied in the differing systems. The rules or technical standards to be adopted by the Commission should be broad and flexible so as to permit the use of all systems seriously advanced.

(9) Whether and to What Extent the Commission Should Regulate the Charges, Terms and Conditions Pursuant to Which Subscription Television Service Will Be Offered the Public?

59. In its previous comments, Telemeter has urged that the Commission has no authority over the prices of subscription television programs. Similarly, and particularly since the Commission has determined that subscription television is "broadcasting," it is Telemeter's contention that the Commission has no authority over the price or terms of the service supplied to the subscriber.[1] Furthermore, since subscription television furnishes "box-office" attractions, it should enjoy the same freedom in pricing these attractions that other "box-office" entrepreneurs enjoy. As a practical and legal matter, it is difficult to envision any other arrangement.

60. We might add in this regard that Telemeter has consistently opposed the broadcast of commercials during subscription programs (and such a restriction is contained in the Telemeter franchise agreement) other than the announcements of available subscription programs and rates, similar to trailers of coming attractions shown in motion picture theatres.

(10) Whether a Subscription Licensee Should Be Required To Furnish Service to All Persons Within Its Service Area Who Desire It?

61. Telemeter agrees that all persons desiring subscription service should receive it, provided only that the franchisee must be free to terminate service for non-payment of subscription fees or for irresponsible or unauthorized damage to or use of the decoder equipment leased to the subscriber. Telemeter would, of course, want the right to extend credit to certain customers who will be equipped with credit units, and to equip customers who do not qualify for credit operation with cash units.

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[1] Rate regulation and the prescription of terms of service have traditionally and legally been limited to the common carrier and public utility fields. See Section 3(h) of the Communications Act of 1934, as amended, to the effect that broadcasting shall not be deemed common carriage.

(11) Should Requirements Be Imposed To Insure That the Public Would Not Be Adversely Affected by Obsolescence of Subscription Television Equipment or Cessation of Service and Should the Commission Require That Such Equipment Be Leased Rather Than Sold?

62. Telemeter proposes that decoders be placed in the homes of the public for a small monthly maintenance fee. The public should not be required to invest in this equipment. In this manner the public will not be adversely affected by obsolescence of equipment, nor will an individual subscriber suffer any penalty should he decide to change from one subscription television company to another.

(12) What Restrictions Should Be Adopted Concerning the Nature of Arrangements Among Patent Holders, Patent Licensees, Franchise Holders, and Television Station Licensees, Concerning Such Matters as Whether and Under What Terms and Conditions, Patents on Any Particular Subscription Television System Will Be Required To Be Made Available to Franchise Holders and Station Licensees, and Whether Stations Engaged in Subscription Television Should Be Permitted To Enter Into Contracts That Would Give Them Exclusive Rights To Use a System in a Particular Community?

63. Telemeter has already indicated its position on the question of exclusive franchises. As previously stated, it is premature for the Commission to decide at this point how subscription television will organize itself from a business and franchise standpoint. The only systems which have existed in this hemisphere have been franchise operations in which franchise holders were also patent licensees, broadcasters, and programmers. Regulation of the type required by a mature broadcast industry with a developed form should not be applied to an as yet nonexistent subscription television industry. Instead, the industry should be allowed freedom of growth, as we have stated above, and at an appropriate time, regulations may be formulated, as required, consistent with the form the industry has taken and the dictates of fairness and service to the public.

64. If the Commission adopts Telemeter's proposal not to limit subscription television to a single technical standard or system, it is possible that some cross-licensing and pooling of patents may occur. Moreover, some system proponents may engage in manufacturing while others may not. For these reasons, and until the shape of the industry becomes more definite, it is impractical to attempt to become specific about patent licensing terms and conditions.

(13) Whether Means Should Be Provided To Insure That Subscription Television Will Be Available to All Eligible Stations on a Non-Discriminatory Basis?

65. Whether or not subscription television authorizations should be made available to all stations, VHF and UHF, or all stations in a given market, has been the subject of comment earlier in this document. Assuming that the Commission establishes a class of eligible stations, be it all or a more limited group, it is Telemeter's belief that subscription service should be available to all within the eligible class on a non-discriminatory basis, subject only to the ability of the system operator to reach satisfactory franchise and business arrangements with the station. Just as a network may establish an exclusive affiliation arrangement with one of several stations in a market, dependent upon the business judgment of the network and the affiliate, so should a subscription system operator be free to negotiate with one of several stations upon an exclusive franchise basis if considered desirable.

(14) Should a Limitation Be Placed on the Type of Programming Which Subscription Television Operations May Broadcast and, if So, What That Limitation Should Be and Whether Applications for Subscription Authorizations Should Be Required To Make a Showing of How Their Programming Will Differ From Conventional Programming?

66. Those who have opposed subscription television have created the bugaboo that subscription television will destroy "free" television by "syphoning off" the actors, directors, writers, and other contributors to the program product. The simplest quantitative analysis of the situation shows the absurdity of these fears. With less than five percent of viewing time going to subscription television in the experiments conducted to date, it is hardly likely that a substantial, or even noticeable, quantity of the available talent will be "syphoned off."

67. Subscription television is not a different variety of commercial television. It is a theatre in the home, drawing its talent from that currently involved in box-office attractions of every kind. Its programs are exhibited several times, unlike commercial programs which are exhibited once within a reasonable period of time. Hence it requires an even smaller fraction of entertainment time than might at first be supposed. Subscription television must essentially supply quality, rather than quantity programming. As existing subscription television experiments have illustrated, a major portion of subscription programming will be drawn from box-office attractions such as Broad-

way plays, operas and revues, which are not now available to more than a small minority of the population.

68. Moreover, if subscription television can offer the public cultural programs of an uplifting quality in which talented actors do not have to step out of their roles in order to advertise toilet water and deodorants, it should be permitted to commit this "crime."

69. It must be said too, that the fact exists that there has been a "syphoning" of all kinds of talent away from the quality media such as the Broadway stage, into the quantity medium of commercial television. The result of this "syphoning" process is that talented writers and artists of every kind, have diverted their talents from the production of entertainment of a high, cultural level, into the production of vast quantities of endlessly repetitive situation comedies and soap-opera dramas in addition to other forms of mediocrity. Subscription television will provide the opportunity for talented people to work once again upon the creation of entertainment of superior quality. From the point of view of the public, subscription television will allow them to enjoy this superior programming at prices they can afford.

70. In this connection, Telemeter wishes to quote from its submission of May 25, 1965, wherein it stated:

> "The average motion picture today is seen by only 5% of the population, according to industry sources. A major picture is seen by only 8% or, in rare instances, 10% of the population. A large percentage of the over 90 percent that does not attend movies would like to but does not because of inconvenience to the family or because of cost.
>
> "A young couple with children are faced with a cost of $4 to $5 to go out to a movie—in addition to the expense of a baby sitter—much as they would like to see current pictures. They could afford to pay $1 or $1.50 to see these movies in their home. This does not mean, however, that those able and who can afford a night out at the motion picture theatre will not continue to do so. Nor does it mean that subscribers of Telemeter will not continue to spend five or six nights a week watching commercial television.
>
> "A Broadway show that runs a whole year in a 1,200-seat theatre is seen by 499,200 persons, if every performance is sold out. A large percentage of the 9,500,000 inhabitants of the New York area and millions of others throughout the U. S. would like to see that show. They cannot for either of two reasons: price or distance from Broadway.

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

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

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

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

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

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

scription television programming will be of the box-office nature rather than a duplication of conventional television programming. Therefore, any rule, regulation or policy announcement promulgating a requirement that subscription television not duplicate conventional programming would probably have little influence on the actual program output of subscription television.

75. To assure all interested persons who have exhibited concern in the past, therefore, Telemeter agrees that it may be desirable for the Commission to make clear that subscription television is not to duplicate conventional programming but rather is to be a theatre-in-the-home type operation providing box-office attractions, such as current motion pictures, major sports events otherwise deleted from commercial television programs, theatrical performances of dramatic and musical offerings, operas, operettas, ballets, recitals, and similar presentations, the precise form and content thereof to be determined by the subscription television licensee or entrepreneur and the viewing public. This differs from existing commercial television programming which is basically dictated by the networks and sponsors with little regard for viewer preferences.

(15) Whether Various Sections of the Act, Rules and Policies, e.g., the "Fairness Doctrine," Should Be Modified as They Affect Subscription Television?

76. As illustrated in the preceding discussion, by its nature, subscription television programming will develop as the box-office attraction type of offering, including current motion pictures, operas, Broadway plays, otherwise blacked-out sporting events, and the like. In this type of programming, the chance of the necessity for the application of such policies as the "fairness doctrine" is somewhat remote. To the extent that programming is presented which would bring such policies or rules into play, however, Telemeter sees no reason why they should not apply to subscription programming. It would appear, on the other hand, that no new safeguards, rules or regulations would be necessary to assure the proper discharge of the subscription licensee's responsibilities in these areas.[1] The Commission's existing powers have been adequate with respect to conventional programming and should remain adequate to the task of subscription television.

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1 During the course of Telemeter's Toronto operation, political candidates for public office were presented to viewers, without charge to the candidate or the subscriber, via the closed circuit facilities under policies in accord with the political broadcast provisions of the Communications Act and the "fairness doctrine."

VII. RESPONSE TO NOTICE OF INQUIRY REGARDING WIRED SUBSCRIPTION TELEVISION

77. The Commission's Notice of Inquiry indicates (par. 48) that it will take notice of the comments filed in the inquiry in Docket No. 15971 pertaining to subscription television as related to CATV. Telemeter, in its Reply Comments in that Docket as well as in its Statement filed May 25, 1965, in the instant proceeding (pp. 26-27), made the contention that the Commission has no statutory authority to regulate subscription television by wire or cable. As we there set forth:

> "In its comments filed in 1955, Telemeter contended that since subscription television over the air falls within the definition of broadcasting, a term mutually exclusive with the definition of common carrier service, the Commission obviously does not have Title II regulatory authority over subscription TV.
>
> "Cable subscription TV, of course, would not fall within the definition of 'broadcasting,' for the simple reasons that it makes no use of the airwaves and that the bridging of the geographic gap between the subscribers' sets and the subscription television studio would not involve the radiation of electro-magnetic energy. Nor would this difference in the technique of bringing subscription television signals to the subscribers' sets make the cable subscription television operator a common carrier. *WSTV, Inc.* v. *Fortnightly Corporation,* 23 RR 184 (1962). In fact, the establishment of a cable subscription television system does not, under existing law, require any authorization from the Commission."

78. Telemeter is aware, of course, of the Commission's assertion of jurisdiction over non-microwave served CATV's and of the pending legislation in Congress to support that jurisdiction. In the case of the closed-circuit subscription operation by wire, however, which involves no use of frequency space whatsoever, and in the case of the CATV system which, itself, originates subscription television programs (as distinguished from the off-the-air pick-up or microwave-fed subscription programs), there should be no question that no federal regulatory authority exists.

79. Assuming that the Commission's assertion of jurisdiction over CATV's is affirmed either by the Courts or the Congress, Telemeter's further comments will be directed to those situations where a regulated CATV system either picks up subscription programs off-the-air from the originating station or receives them on its cable system via microwave from the originating station. Under these circumstances and assumptions, response to the specific inquiries of the Commission is made.

(1) Would It Be Necessary To Have Built-in Antennas in the Decorders Attached to Sets of Subscribers?

80. It would not be necessary to have built-in antennas in this case. The coded transmission could be delivered via the CATV system in the same manner that free broadcasts by the same station would be delivered. Subscribers would have decoders connected between the CATV cables and their television sets, and the operation would be exactly the same as has been described earlier.

(2) Would a Single Decoder Attached to the Antenna of a CATV Which Delivered the Unscrambled Signal to Subscribers Suffice? If So, What Arrangements for Collection of Subscription Fees Could Be Made?

81. While it would be possible technically to decode subscription television programs at the input to a CATV system and make some kind of flat-rate arrangement with the CATV operator, this is commercially impractical. The suppliers of entertainment of high quality have always preferred to participate in gross receipts via percentage arrangements. Clearly, such an arrangement with a CATV operator as has been described above, would be commercially impossible. Furthermore, the public has shown a reluctance to pay a flat fee for blocks of entertainment, and such an arrangement implies a flat fee for CATV subscribers.

(3) Would the Rules on Carriage of Signals of Local Stations Over CATVs Apply to Carriage of Subscription Programs?

82. It seems logical to suppose that the same rules would apply since, as has been indicated above, broadcast stations in the subscription television service will probably be required to function as commercial stations about half the time.

VIII. ORIGINATION OF SUBSCRIPTION TELEVISION ON CATV

83. Although the Commission has not in this Docket called for specific comments regarding this subject, Telemeter respectfully submits the observations which follow.

84. The origination of subscription television on CATV systems is both technically and commercially feasible. Telemeter has already added three channels of subscription television to an eleven channel television system in an experimental operation in Montreal, Canada. The obvious advantages which may accrue to both CATV and subscription television from this arrangement include the following:

(a) Sharing of the cost of transmission facilities by subscription television and CATV.

(b) The provision at low cost to the public of a purely additive service which takes no spectrum space whatsoever from other uses.

(c) The provision of subscription television service at a significantly low investment above and beyond the already existing investment in CATV plant.

85. The Commission in Docket No. 15971, has under consideration the question of whether CATV systems should be allowed to originate programming. It is natural to suppose that the question of whether CATV systems should be allowed to originate subscription television programming should be considered in the same context. However, the distinction between the origination of subscription programming and all other types of programming is so great, that an injustice may be done if the same considerations are applied to both. Therefore, Telemeter urges that the question of allowing CATV systems to originate subscription programming be considered separately in this Docket.

86. The origination of commercial programming on CATV systems presents obvious competitive problems, vis-a-vis commercial broadcast programming. The effect of such origination upon the continued existence of local broadcast stations would therefore be a prime consideration in any determination to be made. But these considerations do not operate in the case of subscription originations because as experience in experimental operations has shown, the viewing public devotes only about five percent of its viewing time to subscription television. Therefore, subscription television is not really competitive, viewer-wise, with commercial television, either closed-circuit or broadcast. Subscription television is a new entertainment medium which is not truly competitive with advertiser-sponsored mass media.

87. The opponents of subscription television have, of course, attempted to prevent its origination in any form. They have objected to subscription television via CATV because this might result in quality programs to the public at lower cost (the cable facilities being shared with the CATV operation). The assumption here is that somehow it is illegal to supply a quality product at lower cost! The opponents have also attempted to stifle subscription television on CATV because this might be the "back door" to the general institution of subscription television. If the public is going to receive the benefit of programming of superior quality at lower prices, it does not seem germane whether it enters by the front door or the back door. If, however, the opponents of subscription television would prefer, Telemeter would be happy to institute subscription television at the front door, as soon as the originators of these phrases explain what that is.

IX. CONCLUSION

88. In conclusion, Telemeter urges that the Commission regularize subscription television operations forthwith by the adoption of rules authorizing such service. Eleven years have elapsed since the institution of this Docket. Unlike most proposals, subscription television has not only undergone extensive comment and study but actual experimentation in the market place. These experiments have demonstrated an acceptance by the public of the concept without harm to the conventional television media.

89. The subscription television industry is ready and waiting to provide superior programming in the public interest. Its opportunity to do so should no longer be delayed.

WHEREFORE, Telemeter urges the adoption of rules authorizing the regular use of subscription television consistent with the suggestions contained in these and its earlier comments.

Respectfully submitted,

INTERNATIONAL TELEMETER CORPORATION

PAUL A. PORTER
REED MILLER

ARNOLD & PORTER
1229 19th Street, N.W.
Washington, D. C. 20036

Counsel for
International Telemeter Corporation

October 10, 1966

AMERICAN CIVIL LIBERTIES UNION,
Washington, D.C., October 19, 1967.

Hon. HARLEY O. STAGGERS,
Chairman, Interstate and Foreign Commerce Committee, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I am enclosing copies of comments of the American Civil Liberties Union which were filed with the Federal Communications Commission concerning proposals for Subscription TV Service.

I believe the comments are self-explanatory, and I would appreciate it if they could be included in the record of the hearings on Subscription TV recently conducted by your Committee.

Sincerely yours,

LAWRENCE SPEISER,
Director, Washington Office.

Before the

Federal Communications Commission

Washington, D.C.

Docket No. 11279

IN THE MATTER OF AMENDMENT OF PART 73 OF THE COMMISSION'S RULES AND REGULATIONS (RADIO-BROADCAST SERVICE) TO PROVIDE FOR SUBSCRIPTION TV SERVICE

Comments of the American Civil Liberties Union, February 8, 1967—Supplement to the October 7, 1966 Comments

INTRODUCTION

The American Civil Liberties Union has concluded that subscription or pay-by-the-program television (herein termed STV) offers a means of increasing diversity in broadcasting under regulations which insure civil liberties objectives.

It was not possible for the ACLU to deal with all of the many and inter-related questions raised by the FCC's "Further Notice" in the time allotted for comments. In its "Comments" of October 7, 1966, the ACLU therefore stated ". . . we intend to present supplementary comment on the broader issues noted above, hopefully by January 30, 1967."

In order to place these supplementary comments in context with ACLU's original comments, as well as avoid the need to make separate references to them, they are excerpted in the following section.

EXCERPTS FROM ACLU COMMENTS OF OCTOBER 7, 1966

". . . we regard *diversity*[1] of expression as an application of the First Amendment's *free speech guarantees*. . . .

"We wish to emphasize that our criteria and objectives for STV, whether over-the-air or cable, are that it meets the requirement of diversity preferably through the *self-regulatory effects of free and fair competition*, but where competition is not, or cannot be, effective, that the government provide equally effective regulation including through implementation, where necessary, of the Commission's fairness doctrine and Section 315 of the Federal Communications law. . . .

"The ACLU believes that STV . . . cannot be regarded as simply a 'beneficial supplement' (in the language of the Commission's notice) to present over-the-air broadcasting, but *must be considered to be an independent system of public communications* which demands appraisal of its inherent capabilities, potentials, and regulatory requirements in the public interest. A wholly new relationship between the public and the producer of the program or service will be created when the public makes a direct payment. . . .

"On the premise that (1) STV can be a system for presenting new and different programming, and (2) open competition will enhance diversity, *the Civil Liberties Union favors no restriction as to permitting STV to function in all markets*, regardless of the number of television stations therein.

". . . consistent with these objectives of fostering STV as a resource for diversity, the ACLU believes that the public will be best served by *separation*

[1] Italic added throughout excerpt.

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

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

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

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

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

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

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

SUPPLEMENTARY COMMENTS

Subscription television by wire or cable

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

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

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

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

Regulation of STV systems

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

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

of the Act, to regulate directly, rather than through station licensees, "the adequacy of facilities and reasonableness of charges."

Eligibility of station licensees for STV

Although the FCC notice is silent on this question, ACLU believes it to be in the public interest to permit educational, municipal, and non-profit stations to employ STV for portions of their broadcasting schedules. STV programming by such stations could be expected to add to the variety of services available to the public, as well as contribute to their financial self-support.

COLORADO TRANSLATOR ASSOCIATION,
Leadville, Colo., October 5, 1967.

Hon. JOHN DINGELL,
House of Representatives,
Washington, D.C.

MY DEAR MR. DINGELL: We are enclosing a copy of our comments to the FCC regarding Subscription Television. We fully agree with you on your anti-pay TV bill.

We feel the FCC should have more important things to do than to succumb to the pressures of the few who will gain from such a system. We may need better TV in the country but we need it for everyone, not just the ones that can pay for it. Pay TV is not the way to better TV for everyone.

We see no way that siphoning of programming can be prevented in the long run.

Sincerely yours,

A. K. SMITH, *President.*

COLORADO TRANSLATOR ASSOCIATION,
Leadville, Colo., September 27, 1967.

Docket No. 11279

In the Matter of Amendment of Part 73 of the Commission Rules and Regulations (Radio Broadcast Services) to Provide for Subscription Television Service:

The Colorado Translator Association is comprised of approximately 60 translator organizations and represents approximately 250,000 translator TV viewers throughout the State of Colorado. Most of these viewers would like good quality, good programmed, multiple signal TV to be extended into their areas. We are interested in improvement and expansion of "free" broadcasting. We feel that the rural population of this country should be considered in FCC rule-making and not be forgotten to fend on our own.

STV apparently will only be allowed in the top 100 markets and further only in areas having five or more licensed stations. In both the case of CATV importing distance signals and in STV this can only have the effect of decrease or eliminating the possibility of a greater number of licensed stations in these areas. Further, this will then eliminate the possibility of a greater number of stations for the remainder of the outlying communities.

We, therefore, stand against any form of STV whether by over-the-air methods or by wire.

There is just so much programming available to place on TV. Any amount of siphoning will be detrimental to all television now received. It is stated that 85% of programming will be newer movies and combined with sports will take up a maximum of 90% of viewing. If it is felt that the new movies are such a boon to better programming, why is it only considered for a small portion of the population of the country? If this is the area that is to swell the knowledge of the people and give them the better things of life, maybe it should be considered to allow these on free TV so all could enjoy their benefits. The cultural benefits to be derived from such a system are just about nil. These can be put on ETV just as well where everyone can benefit by them.

We see no need for such a system nor any warrant for such a system. The only people who will benefit by this will be the suppliers of the equipment and the collectors of the dollars from the sale to the chosen few who can afford it.

With just a small percent of the population subscribing to STV there will be enough money involved to outbid any free broadcasting system and gradually siphon all the lucrative programs so that only a few will see them.

Apparently, the FCC has been sold a bill of goods in this matter. We think that California in its vote against it showed the will of the people even though it was declared illegal.

We are sorry that we can give no constructive criticism on this proposal rule-making because we feel that any part of it is destructive to the TV viewing of the country as a whole.

Yours very truly,

A. K. SMITH, *President.*

WGN CONTINENTAL BROADCASTING CO.,
Chicago, Ill., October 10, 1967.

Hon. TORBERT H. MACDONALD,
Chairman, Subcommittee on Communications and Power, House Interstate and Foreign Commerce Committee, U.S. House of Representatives, Washington, D.C.

MY DEAR CHAIRMAN MACDONALD: As President of the corporate licensees of television stations WGN–TV, Chicago, Illinois, KDAL–TV, Duluth, Minnesota, and KWGN–TV, Denver, Colorado, I am writing in support of H.R. 12435, a bill sponsored by the Honorable John D. Dingell of Michigan. This bill would prohibit the Federal Communications Commission from authorizing over-the-air pay television.

The proposed Fourth Report and Order adopted by the Commission's Subscription Television Committee would authorize over-the-air pay television on a permanent basis. Such an action by the Commission would run wholly counter to the scope of its statutory jurisdiction and the will of the Congress. The Commerce Committees of both houses of Congress have expressed their views either questioning the jurisdiction of the Commission to license pay television operations or stating that such operations should not be authorized by the Commission without specific authorization by law.

The jurisdiction of the Commission to act in this area is at best questionable and is an additional reason why it should be barred from proceeding further with the permanent establishment of pay television without specific Congressional approval.

If the Commission were to establish pay television, the rates of this new pay-as-you-go service would have to be regulated to protect the public.

However, if pay television is "broadcasting," as the Commission has found, there is no authority in the Communications Act to regulate the rates charged for pay television. Since the Commission's Subscription Television Committee admits that its "authority to regulate rates for the new service—a broadcast service—is open to question," the Commission should get Congressional guidance before proceeding any further.

Pay television is, by any standards, a basic modification of the American system of free broadcasting and consequently, any decision on the authorization of such a service should originate with the Congress and not the Commission. Obviously, the Commission should not be allowed to establish on a permanent basis a service for which there has been neither a public demand nor an indication of public benefit. It has never been established that (1) there is either a substantial need or public demand for pay television or (2) that pay television would provide a meaningful supplement to existing free television broadcasting.

The contention that subscription television will provide a beneficial supplement to existing television service is not supported by the record. Ninety-one percent of the programming ultimately provided in the Hartford experiment consisted of sports events and feature films, a current staple of conventional television broadcasts. Even the Commission's Subscription Television Committee noted in its proposed Report that ". . . . the major part of the programming as opponents had argued, will be of a kind that will appeal to a mass audience."

Thus, in reality, pay television had little to offer that has viewer appeal which is not now offered by free television or which cannot be offered by free television or public television.

We have faith in the capacity of our nation's free television system to meet and grow with the public's changing needs, tastes and interests. This system presently offers and will continue to offer the best way of serving the public. Pay television poses a grave threat to free television as we know it today. If Congress allows the Commission to establish pay television, the ability of free television to provide effective service to the entire public (including those unable to pay for service) would be drastically curtailed. Indeed, the public, those of means

and those without, would be forced to pay for that which they now receive free of charge.

For these reasons, we strongly support the enactment of H.R. 12435.

We respectfully request that this statement be made a part of the record of your Subcommittee's hearing on pay television.

Respectfully submitted.

WARD L. QUAAL, *President.*

AMERICAN FARM BUREAU FEDERATION,
Washington, D.C., October 17, 1967.

Hon. TORBERT H. MACDONALD,
Chairman, Power and Communications Subcommittee, Interstate and Foreign Commerce Committee, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN MACDONALD: The American Farm Bureau Federation has followed with great interest the hearing conducted by the Power and Communications Subcommittee relative to subscription television. Farm Bureau is composed of more than 1,700,000 dues-paying farm families in more than 2,700 County Farm Bureaus in 49 states and Puerto Rico.

Our interest in this matter is predicated on the importance of television to rural America. In addition to providing entertainment, television has become a working tool for many farm families who depend upon it as a source of up-to-date weather and market reports and also information of a technical nature concerning cultural and marketing practices essential for efficient and profitable farming operations.

Consequently, the American Farm Bureau Federation for many years has maintained a firm policy position on broadcasting which, in essence, calls upon the Congress and the Federal Communications Commission to take such steps as may be required to assure rural residents the best possible radio and television service consistent with technological developments and within the framework of the American private, competitive enterprise system. Our most recent policy statement dealing with radio and television broadcasting, adopted by the voting delegates to the 1966 annual meeting states, in part:

"Adequate daytime and nighttime radio and television service should be available to farm and rural families in all areas of the nation. Neither Congress nor the Federal Communications Commission should take action to impair existing service in those areas where it is adequate. In cases where broadcasting opportunities become available, we favor allocations to rural areas not now receiving adequate service.

"We encourage broadcasters to use their franchises in the public interest and to serve adequately the interests of rural families. . . ."

Although this policy statement does not deal specifically with what generally is known as "pay television," it leaves no doubt that Farm Bureau members favor only those governmental actions or utilization of new techniques which will improve—rather than impair—present service to rural areas.

We recognize that current proposals for authorization of a subscription television system at this time would be applicable only to those centers of population which have at least five television broadcasting facilities, including the one which might be converted to a pay broadcasting basis. On the surface, it might appear that this limitation would not involve stations now serving rural areas and, therefore, would not substantially affect rural viewers. Although the effect on stations serving rural viewers might be inconsequential at the outset, the long-range results would be highly significant.

We are concerned in two respects that subscription telecasting, regardless of the degree to which it is limited initially, in the long run will tend to erode the current system of commercial television. First, any alteration of the present commercial television system which requires allocation of one or more of the limited number of channels for STV use obviously would narrow the total scope of telecasting. The public, including rural residents, would be denied access to the channels so allocated either for existing commercial usage or for expanded service.

Second, the erosion of total service doubtless would extend also to the quality of programming. With subscription service in existence, it is most likely that some of the most popular—and most expensive—productions now made available by commercial sponsors would shift to a subscription basis. In any event, top-flight talent—writers, producers, and entertainers—certainly would tend to be

drawn to the STV productions. Also it appears unrealistic to assume that most major sports events of nationwide interest would not be shifted to a subscription basis as quickly as the proposed FCC ruling would permit.

It is the sincere desire of Farm Bureau that new techniques be applied to broadcasting whenever those techniques will improve the service now available to farmers and residents of small towns in rural areas. We do not favor changes in the present broadcasting practices which will reduce or impair this service.

We respectfully recommend that you and Members of the Subcommittee consider carefully the effect upon service available to rural America of any alteration in the present system of broadcasting. It is our firm belief that decisions of such far-reaching significance as authorization of a system of subscription television necessarily must rest solely with the Congress.

We request that this letter be made a part of the hearing record.

Sincerely,

JOHN C. LYNN,
Legislative Director.

E. F. HUTTON & Co., INC.,
Los Angeles, Calif., September 15, 1967.

Hon. TORBERT MACDONALD,
House of Representatives,
Washington, D.C.

DEAR MR. MACDONALD: In view of your interest in pay television, I am enclosing a copy of my recent radio broadcast on the subject.

If your committee should hold public hearings, I would appreciate an opportunity to appear as an informed witness on behalf of the poor, long-forgotten public.

Very truly yours,

ALLAN MACDOUGALL, Jr.,
West Coast Research.

LABOR DAY BROADCAST, SEPTEMBER 4TH 1967

Telephone rings . . . girl's voice: Good morning, E. F. Hutton and Company. Good morning, Charles Stone speaking for E. F. Hutton . . . In observance of Labor Day, all major stock exchanges are closed today, and instead of the usual Business News, E. F. Hutton & Company brings you a special transcribed program prepared by Allan MacDougall, Jr., of our West Coast Research Department.

Some time ago we devoted two of our holiday broadcasts to the subject of pay television, and many listeners expressed an interest in our explanation of this controversial but potentially-dynamic new industry.

Last July 14th the pay television subcommittee of the Federal Communications Commission issued a report and a second Notice of Proposed Rules-Making which envisage the creation of a national pay television system by the end of 1967 . . . Therefore, this seems an appropriate time to discuss further the potential of pay television, and, specifically, the rules under which the Commission proposes to let it operate.

First, by way of review, let me explain that our previous broadcast discussed over-the-air pay television, which really bears no relationship to the local ill-fated cable television venture of a company called Subscription TV, Inc.

The rules of the Federal Communications Commission are the result of a five-year experiment conducted in Hartford, Conn., by Zenith Radio, its licensee, Teco Inc., and the RKO Division of General Tire. Under this system, the broadcast station sends out a scrambled television signal. A subscriber leases a decoder which is attached to the antenna terminals of his set. When he wishes to watch a program, he adjusts certain dials on the decoder and the program is then received in the clear. A built-in recording device keeps a record of the programs watched, and the customer is billed only for those programs that he actually dialed for viewing.

This all sounds very simple, but setting up the rules for a new type of broadcast service is very complicated. Furthermore, pay television has been fought at every turn by the theatre interests, who realize what formidable competition it would be for the public's entertainment dollar. In addition, the television networks, who have prospered under the status quo, have opposed pay television.

It has been a shocking lesson in the procedures of bureaucracy and the political power of pressure groups to realize that pay television has been tech-

nically feasible for 17 years! The first Federal Communications Commission action the subject took place in 1955 with the issuance of a proposed Rules Making, which invited comments to help it decide if it would be in the public interest to transmit programs paid for on a subscription basis. By 1957, these comments had been received and evaluated, but the F.C.C. stated that no applications could be filed until after adjournment of the 85th Congress, in order to give the legislators an opportunity to consider the matter.

This delay on behalf of Congress lasted until 1959, when the Commission said it would accept applications. By 1962, three applications had been filed. Two were granted, one of which was relinquished, and only the Zenith-Teco-RKO team carried on. The experiment ran for three years on station W.H.C.T. in Hartford, Conn., and on the basis of this experiment, Zenith and Teco applied for a nationwide license in 1965. Based on this data, the Commission issued a further notice of proposed rules-making and again invited comments from interested parties.

Now, after an interminable preamble of hearings, tests, and allowance of time for Congressional action, the F.C.C. has issued a proposal to allow nationwide pay television. Further comments are invited until September 15th, as the opponents make a last stand at preventing a new industry from being born.

Doesn't it sound to you as if the matter has had a thorough and lengthy-enough discussion?

The Federal Communications Commission, like any government agency, is obviously not going to let this infant industry establish itself in the marketplace under free competitive conditions. Rather, the Commission has severely limited its potential, which is seemingly the main object of the set of rules we will now discuss and comment on.

First of all, no commercials are to be allowed on pay television, which is only to be expected. . . .It will be allowed only in large cities which have five licensed stations. This rule is intended to make sure that ample so-called free television is still available.

An ultra-high frequency or very-high frequency station carrying pay television in such a five-station market is not limited as to the amount of subscription time it may broadcast; but not more than 90% of is programming shall be utilized for feature films and sports events. This rule is intended to insure that pay television will create other types of programming not now generally available such as plays, opera, ballets, and the like.

Only one pay television authorization will be granted per community, but the permittee may use any technically-qualified unscrambling system.

All decoders must be leased to protect the consumer from early obsolescence; and all charges, conditions, and terms must be applied uniformly. Any organization receiving a permit must prove it has the financial capability to maintain operations for at least one year.

These generally mundane rules seem quite sensible from the point of view of protecting the public with guarantees that it will receive adequate service, reception, and continuity of operation. But in its rules as to programming, the F.C.C. ranges far afield in its efforts to protect the "sacred cow", free television.

Let's consider the progamming rules. As to feature films, a pay television station can show only films within two years of the date of their release to the theatres. Supposedly, this is to protect the consumer from paying to watch an old film. But is this necessary? Certainly an individual is not going to pay to watch a film he can see for free. But even then, many people might consider it with 50¢ to see an old film without the endless commercials. Why shouldn't we have the option of paying not to have commercials?

In the field of sports, the regulations really get complicated. Again the period is two years, and no event can be shown on pay television which has been available for free in the last two years. This will insure that events like the World Series, basketball, football, and golf can still be seen on so-called free television. About the only new programs available will be big championship fights, which heretofore have been pre-empted by pay television in the theatres; also those home baseball and football games which have been "blacked out." It is believed that this ruling raises some very touchy legal questions. If organized baseball owns the World Series, and pay television can afford to pay a higher price than commercial television, has the Federal Communications Commission the legal authority to deprive the owner of selling his property at the best price available? Why didn't the F.C.C. ban theatres from monopolizing prize fights at $10 a person? The one ruling would be just as logical as the other.

Finally, in order to protect special high-rating features, such as Bonanza, Peyton Place, or whatever, pay television is banned from "siphoning" such programs. Actually this is silly, because 25¢ from one million television sets would pay for a program of infinitely better quality than the customary weekly series.

The unnecessary complexity of these regulations and the 12-year procrastination in authorizing pay television actually provides an ideal case study of the folly of Government interference with the normal free enterprise system.

If over-the-air pay television had been promptly authorized, investors would not have lost $22,000,000 in Subscription TV, Inc. Building a cable system did circumvent the F.C.C. and investors realized the fantastic potential of pay television. But where Subscription TV's proponents erred was in underestimating construction costs and the political power of their opponents.

The ruling being here discussed consists of 108 closely-written pages; but in reality it misses the entire point. The Federal Communications Commission is concerned with "protecting" free television, but why does a bureaucracy believe that an industry should be protected from competition? Why can't the bureaucracy let the American people make its own free choice? Pay television or free television should be allowed to stand or fall on its own merits. If pay television provided superior programming and eliminated the commercials to the extent that everybody preferred to watch it, free television would be wiped out. But it would be eliminated by the popular vote of the viewers! On the other hand, if enough people prefer to watch free television, it will continue to prosper. Why does a government agency feel it should "protect" an individual from exercising his own choice?

It should be here emphasized that pay television can fail, but at least it should have a chance to compete! In view of the many problems still to be overcome, the political pressures involved, and further possible litigation, nothing in this discussion should be taken as a recommendation concerning the companies mentioned.

Copies of this morning's broadcast (written by Allan MacDougall, Jr.) may be obtained by writing to E. F. Hutton and Company, 623 South Spring Street, Los Angeles 90014.

Charles Stone speaking for E. F. Hutton. Tuesday morning at this same time, David Boyle will be here with the usual Business News, now in its 26th year of continuous service to California investors.

WISHING WELL CLUB MOTEL, INC.,
Easton, Md., October 15, 1967.

Congressman MACDONALD,
Washington, D.C.

DEAR CONGRESSMAN: Pardon the omission of your first name. I wanted to get this message to you as soon as possible. The newspapers didn't print your first name.

I have followed the controversy over the question of TV as is versus Pay TV and I have not seen where Mr. Average Citizen or anyone whose business includes TV showing in the package it sells to the public, has testified.

Although, I am small in the motel industry with 30 TV sets in use and am only an average citizen I am very much concerned about the possible impact Pay TV would have on consumers and small businesses such as ours. Most motel publicity centers on the well-known chains but it is a fact that 75% of the accommodations in the country are in the small motel category. There are also many taverns, cocktail lounges and gathering places where TV has become an integral part of the business.

I belong to the National Federation of Businessmen and there are many such organizations plus Chambers of Commerce who could speak out. There is also the Small Business Administration in Washington. If none of these have the energy to speak on this issue I can assure you that I am very able to fill the void.

Yours truly,

SAMUEL J. SETTA.

(Whereupon, at 12:30 p.m., the hearing was concluded.)

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