

Mr. MACDONALD. Thank you very much.

Actually you touched on what I think is a very basic feature of these hearings, the concern of some members of the subcommittee and the full committee, about the right of the FCC jurisdiction to put out licenses for subscription TV. While doing homework during the week on this matter, I couldn't find except one case in which the court agreed with you that you did have jurisdiction. I know it will be very helpful for the committee if you can outline why you believe you do have jurisdiction because I think that is the bedrock of this entire hearing.

Mr. HYDE. Mr. Chairman, I believe it might be well to bring up to date the memorandum of law that was submitted by the General Counsel. I think the only case in point would be the appeal from the Commission's decision authorizing the trial in Hartford.

We recognize, of course, that this was—

Mr. MACDONALD. Yes, but I have the language here. I would be interested. The court affirmed the Commission's decision but it noted that "distinguishing characteristic of the Federal Communications Commission authorization of subscription TV in this case is the experimental or trial basis upon which it is to operate for the duration of its 3-year authority."

This was page 873 of that decision. It would seem to me that although you buttressed the fact that fundamentally you do have jurisdiction, I would think if I were a lawyer on the other side, and I am not, that you could use that very case against the fact that the court felt that you had jurisdiction for an experiment but not on a full-time basis.

I wish that you would explain your position about this. This is not going into the merits of the thing that is pending before you but it is just the basic question that we are concerned with here.

Mr. HYDE. Mr. Chairman, you are quite right in pointing out that the decision we have just now cited was an appeal from a grant for experimental authorization and to sustain the Commission's power to grant the authority for an experiment would not necessarily imply that we had authority to grant authority for a regular service.

But we do not base our assertion of authority and responsibility on this case alone.

I think I should refer you to the memorandum of law. It does discuss the general powers of the Commission and we would not by any means limit our assertion of responsibility in this area to this particular case.

The Communications Act of 1934, as amended, grants very extensive powers and responsibilities to the Commission to allocate frequencies to various kinds of services under conditions that such grants will serve the public interest.

It includes a provision, section 303(g) requiring the Commission to encourage the larger, more effective use of radio. These and other provisions seem to require the Commission to recognize new services as technology develops and to provide allocations and rules appropriate to the use of radio in the public interest as the new technology permits.

Mr. MACDONALD. Right.

I agree with that. That is obviously true.