

the familiar requirements of equal opportunities in the use of broadcast facilities by candidates for public office. Section 317 requires that all matter broadcast by any radio station for which service money, or any other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person. Section 325(a) prohibits broadcasting stations from rebroadcasting programs of other broadcasting stations without express authority from the originating station. Section 325(b) requires that prior authorization be obtained from the Commission for transmission of programs from a broadcast studio located in the United States to a station located in a foreign country for broadcasting from such foreign station if broadcasts from the foreign station may be consistently received in the United States. Section 326 prohibits censorship by the Commission of any radio communications, including broadcasts.

The foregoing examples illustrate the Congressional practice of legislating in specific terms the limitations Congress desired to impose on the Commission's general power to license the use of radio frequencies. Apart from such specific limitations as the foregoing, Congress has laid down the general requirement that as a condition to the issuance of licenses authorizing the use of radio frequencies, the Commission determine that the public interest, convenience or necessity would be served thereby. Thus, the authorization of subscription television would be subject to the requirement of such a finding. There appears to be no other language in the statute suggesting Congressional intent to limit further or to prohibit authorization by the Commission of subscription radio or television operations.

The bare language of the statute must be read, however, in the context of the history of broadcasting and the circumstances of the industry at the time the relevant portions of the statute were enacted.

#### LEGISLATIVE HISTORY

There is little in the legislative history of the Communications Act of 1934, or any of the amendments thereto which casts light on Congressional intent relating to the powers of the Federal Communications Commission to authorize the use of radio frequencies for subscription programming involving the encoding of broadcast signals and the payment of a charge incidental to the reception of subscription programs in intelligible form. Congressional debates and actions relating to the predecessor Radio Act of 1927 do, however, make some direct reference to the question. Since the relevant portions of the Communications Act of 1934, constituted virtual re-enactment of provisions of the earlier law it is appropriate to consider the legislative history of the earlier Act in this respect, particularly since there had been no change between 1927 and 1934 in the universal practice of transmitting broadcast programs in the clear and their reception by the radio audience without the payment of any fee or charge.

In these circumstances the legislative history of the Radio Act of 1927 may be usefully studied with a view to determining whether Congress intended that the established universal practice of the broadcast industry of relying on advertising revenues and of broadcasting programs which could be received free of charge to the viewer, theretofore a voluntary practice, become mandatory under the 1927 statute.

It seems clear that so-called "free" broadcasting was not mandatory prior to 1927. The limited powers of the Secretary of Commerce under prior laws were inadequate even for the enforcement of the terms of licenses issued by him designating the frequencies on which licensees were to operate. A careful review of the legislative history of the Radio Act of 1927, however inconclusive it may be in some respects, gives little support to the theory, put forward by some parties to the Commission's subscription television proceeding, that Congress intended to prohibit authorization by the Federal Radio Commission of subscription radio. In light of the legislative history, which is briefly summarized in this Memorandum, it appears unlikely that if such had been the intent of Congress, it would have relied upon merely inferential limitations on the otherwise broad powers conferred on the Commission. As will be seen, the question of subscription radio was debated and was the subject of certain Congressional actions. Yet, the legislation as finally enacted contained no language specifically prohibiting subscription radio, while express limitations were laid down in relation to other matters, already mentioned in which Congress intended to limit the otherwise broad licensing powers conferred on the Commission.