

the experiment" (Pet. App. 6). The court also pointed out, in this connection, the power retained by the Commission to terminate the trial upon notice and hearing at any time prior to the expiration of the 3-year period, and the Commission's expressed determination to oversee carefully the conduct of the trial.

ARGUMENT

1. The only issue properly before the Court is whether the Federal Communications Commission is empowered to authorize on a trial basis a subscription television system which requires the payment of direct fees by the public.⁵ The decision below, upholding this power, was correct and no further review by this Court is warranted.

Petitioners' contend (Pet. 17-20) that, because of the novel nature of subscription television, the Commission is without power to license it, in the absence of a specific affirmative grant of such power in the Communications Act. This contention rests on a misreading of the Act which, as found by the court

⁵ "The dangers inherent in a pay-TV operation" set forth at pages 15-17 of the petition represent petitioners' predictions of the effects of permanent authorization of subscription television and do not provide a reason for the grant of certiorari in this case. It is for the precise purpose of providing operational data which will enable the Commission to evaluate the impact and benefits of subscription television before deciding whether to authorize it on an extended basis, that this trial was authorized. A determination of the public interest objections to permanent operation asserted here by petitioners will be made at a further hearing to be held by the Commission at the conclusion of the trial operation (23 F.C.C. 556).