firmative duty . . . to experiment with and develo the most desirable deployment and utilization of th nation's communications facilities" (Pet. App. 6 The license challenged here falls squarely within th scope of that duty.[8]

2. Petitioners' contention (Pet. 22–25) that th Commission erred in authorizing a trial subscriptio television operation without first determining whethe it can or should regulate rates, is raised for the firs time in the petition and is therefore not properl before the Court. This allegation of error was nc included in the notice of appeal or in the stipulate issues filed with the court of appeals (J.A. 1–4) Contrary to petitioners' present contention (Pet. 25 fn. 27), it was not presented to the court of appeal in the briefs below.[9]

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[8] Petitioners also urge (Pet. 20–21, 22) that, while the Com mission found it had statutory power to authorize subscriptio television on a regular, permanent basis, the court of appeal did not reach this question and found such authority only t authorize a trial test. We do not believe this to be a correc evaluation of the opinion below, so far as the issue of basi authority raised by petitioners is concerned. Statutory suppor for the Commission's jurisdiction to authorize a system requir ing the payment of fees by the public is equally necessar, whether that authorization be for a trial or a permanent opera tion. Neither the Commission nor the court below (nor, indeed petitioners) made the alleged distinction. As petitioners recog nize (Pet. 21, fn. 23), the court below correctly stated petition ers' contention as a broad attack on the Commission's statutory power to authorize any system requiring the direct payment o fees from the public.

[9] In their briefs before the court of appeals (copies of which are being lodged with this Court), petitioners assumed that th Commission had no power to regulate rates in arguing that it had no power to authorize subscription operations, but did not