

granted always that Congress may, if it sees fit, modify the act which we administer.

Unless they see fit to do that we must continue to administer the act that we already are charged with administering.

Mr. HARVEY. I just have a couple other questions here.

Is the case presently before the FCC considered to be one within its rulemaking authority?

Mr. HYDE. Yes, the Commission has so stated in its last notice on this matter.

Mr. HARVEY. Is it presently in what we would call and adjudicatory posture?

Mr. HYDE. Yes, it is.

It is in the adjudicatory posture in the sense of a rulemaking proceeding where you have various parties presenting conflicting points of views.

We did, as a matter of fact, hold hearings on the record on Monday and Tuesday of last week. The report issued by our committee was the subject of the discussion.

Mr. HARVEY. I have no further questions at this time, Mr. Chairman.

Mr. MACDONALD. Just to clear that point up—we all seem to get back to the jurisdiction question—earlier you indicated to me that the memorandum of law which was sent to Mr. Harris in 1957 indicated that in the judgment of the Commission they did have jurisdiction.

Mr. HYDE. That is correct.

Mr. MACDONALD. Since you gave me that answer, Mr. Chairman—I am not being forceful but I have just read it and it does not say that at all.

If you will pardon me I will read it to you and you can judge for yourself what it says.

It says—

The question of the adequacy of the Commission's regulatory powers presents different problems with respect to full-scale nationwide subscription television operations. We cannot determine until after a reasonable trial period whether the authorization of subscription TV on some general scale would be in the public interest.

This is the important part I am coming to now.

"Nor can we determine at this time"—this is the letter by which you asserted jurisdiction—"nor can we determine at this time the conditions which it may be necessary to impose ultimately on subscription television operations if their authorization on some general basis should be found to be in the public interest. Thus it would be in our view premature to attempt to ascertain whether amendments to the Communications Act would be required."

So, obviously he was saying that you did not have jurisdiction. If that is the basis under which you are asserting jurisdiction it seems a little flimsy one to me.

Mr. HYDE. May I discuss the matter a little fully.

Mr. MACDONALD. Of course.

Mr. HYDE. I believe the language you are referring to has some reference to what the powers of the Commission might be to regulate the fees. Under the committee's suggestion here there would be no effort at regulations of that kind. I also would like to qualify my earlier answer about the Commission's power.