

The second thing that it presupposes is that their product is so bad that people are going to watch subscription TV and not watch the networks at all to the point where they are powerless.

Now, I know David Sarnoff very well and I know William Paley and I know Leonard Goldenson. We have had a lot of competitive go-arounds with these people and I have the lumps to prove it, too. If you think that they are going to sit around and let us take their audience and take over this medium, this is the most ridiculous suggestion I have ever heard.

I know what they are going to do. They are going to throw against subscription the best programs that they can possibly get and if it means losing money for the whole network for a year, if it could put us out of business and keep up from getting going on this thing, I am sure they would be very well tempted to do it.

Now, if we lose that kind of competitive battle, we certainly have no quarrel at all. This is perfectly all right. This is the good old American way. If they can do such a good job with the network programing that nobody is going to watch subscription TV and we can't get the kind of programs that people pay for, enough to support the thing, fine; we are wrong. We have been wrong before about products and we probably will be in the future. That is perfectly all right. But then it also presupposes that, in addition to these other things happening, this committee and the FCC are just going to sit here and let it happen. I think that is insulting. It insults this committee and it insults the FCC. You obviously have the jurisdiction to see to it that these bad things do not happen.

Now, there is one other matter tha I would like o emphasize, this question of jurisdiction. You gentlemen have raised the point that the FCC acted here without coming to Congress and that there was in the past some committee resolution that requested them to hold up action on a regular basis on this matter until Congress had a chance to act on it.

In 1952 when this matter first came up, I was assistant general counsel of Zenith and had occasion to go into the legal aspects of it. I am no communications lawyer but we consulted three top law firms who are real experts in this matter as to what was the Commission's jurisdictional basis for handling this thing. Should we go to Congress and ask for an amendment of the law or should we go to the Commission and ask for authorization?

In every case, counsel advised us that while there were arguments both ways, there was no question in their mind that the Commission had authority under existing law to authorize this service, that under the way we had proposed it, it was broadcasting and under their powers to encourage new use of radio and to classify different services and to make whatever regulations they needed to make, that they had the power to do this.

So, we proceeded on that basis. Now, it is possible that the lawyers are wrong on that matter. If the FCC should issue such an order there is no question but what it would be appealed in the court of appeals and probably the issue would finally be determined in the Supreme Court of the United States, whether under the existing act this is a broadcast service that the Commission has the right to authorize.

May I say that should it happen that way, we will then be in a situation where if the Court should turn us down, then obviously we